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# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**Committee against Torture**

## Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

### Initial reports of States parties due in 2016

## Viet Nam*, **

* The annexes to the present report are on file with the Secretariat and are available for consultation. They may also be accessed from the web page of the Committee against Torture.

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# Part I
# General Information

## I. Introduction

1. The Socialist Republic of Viet Nam signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the UNCAT") on 7th November, 2013.

2. On 28th November, 2014, the National Assembly of Viet Nam ratified the UNCAT. Viet Nam submitted the ratification instrument to the United Nations General Secretary on 5th February, 2015.

3. According to Article 19 of the UNCAT, Viet Nam reports on the measures taken in the first year to give effect to its undertakings under the UNCAT (2015-2016).

### A. Context

4. Please look into Viet Nam's National Report on universal periodic review under the 2nd cycle (UPR II) and the official website of the Government of the Socialist Republic of Viet Nam[1] for more details as well as the overall information on human rights protection in Viet Nam.

### B. Process of drafting the Report[2]

5. The report was drafted by the national Drafting Committee consisting of representatives from the different ministries and agencies directly related to the protection, implementation and promotion of human rights; among those agencies, Ministry of Public Security (MPS) is the lead agency; with the participation of and comments from organs of Government, local government, social-political organisations, training facilities, foreign non-governmental organisations in Viet Nam, domestic and international experts and the people; referring selectively to experiences of other states and content of national reports such as National Report on the implementation of human rights according to universal periodic review under the 2nd cycle (UPR II), National Report on the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), National Report on the implementation of the International Covenant on Economic, Social and Cultural Rights ... This draft report has been published on the official website of the Ministry of Public Security for public inputs since December 2016.[3]

## II. General legal framework of protection of human rights, prevention and combat against torture and other cruel, inhuman or degrading treatment or punishment

### A. General legal framework

6. There are 36 articles in Chapter II of the 2013 Constitution of Viet Nam regulating on human rights, fundamental rights and obligations of citizens, including the right to equality before law; the right to non-discriminatory treatment in political, civil, economic, cultural and social life; the right to life; the right to physical inviolability; the right to have health, honor and dignity protected by law; the right not to be subjected to torture.

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[1] Retrieved from the official website of the Government at www.chinhphu.vn.

[2] See further in Annex 7.

[3] See further in website of Ministry of Public Security of Viet Nam: http://mps.gov.vn/web/guest/duthao/-/vlegaldraftview/FGcc/2/4074418.

7. The right not to be subjected to torture, cruel, inhuman or degrading punishment or treatment has been stipulated in para. 1, Article 20 of the 2013 Constitution as follows: "Everyone has the right to physical inviolability and to have their health, honor and dignity protected by law; the right not to be subjected to torture, violence, coercion, applying corporal punishment or any other form of treatment which involves in physical violation or violation of health, honor and dignity".

8. The right not to be subjected to torture, cruel, inhuman or degrading punishment or treatment has been also provided in many legal documents on criminal, administrative and civil matters .... In particular, in 2015, the National Assembly of Viet Nam has adopted various legal documents[4] which have new and more progressive contents or amendments. International treaties to which Viet Nam is a party, including the UNCAT, have been incorporated into domestic laws.

9. The 1999 Criminal Code (as amended and supplemented in 2009) prescribes that acts of torture nature are crimes and shall be punished in accordance with different offences.[5]

10. Pursuant to the UNCAT, the new 2015 Criminal Code amends and supplements the offence of obtaining testimony by duress (Art. 374); offence of applying corporal punishment (Art. 373); offence of bribing or coercing another person to give testimony or provide documents (Art. 384); concurrently, still provides offences relating to torture similar to the 1999 Criminal Code.

11. The 2003 Criminal Procedure Code provides that all forms of coercion and applying corporal punishment are strictly forbidden (Art. 6); citizens have the right to life, health, honor, dignity protected by law; all acts of infringing upon the life, health, honor, dignity shall be handled in accordance with the law (Art. 7).

12. The 2015 Criminal Procedure Code provides principles as follows: strict prohibition of torture, obtaining testimony by duress, applying corporal punishment or any other form of treatment that infringing upon human body, life or health (Art. 10); protection of individual's life, health, honor, dignity or property (Art. 11).

13. The 2010 Law on Execution of Criminal Judgments provides principles as follows: compliance with the Constitution and law, guarantee of State's benefits, legitimate rights and interests of organisations and individuals; assurance of socialist humanity; respect for dignity, lawful rights and benefits of sentenced persons (Art. 4); prohibition of taking bribes, causing harassment in execution of criminal judgments; preventing sentenced persons from exercising their rights to request for exemption from or reduction of the duration of a serving sentence (Art. 9).

14. The 2015 Law on Execution of Temporary Custody and Detention provides that torture, coercion and applying corporal punishment or other forms of treatment which infringe upon legitimate rights and interests of the persons held in temporary detention or custody are prohibited (Arts. 4 and 8).

15. The 2015 Law on Organisation of Criminal Investigation Agencies has strictly forbidden obtaining testimony by duress, applying corporal punishment and torture or cruel, inhuman or degrading treatment or punishment or any other form of violation of legitimate rights and interests of agencies, organisations and individuals (Art. 14).

16. The 2011 Law on Complaints guarantees the right to lodging complaints and dealing complaints for every individual and organisation, including victims of torture; prohibits acts of obstructing and harassing persons who lodge complaints, threatening, taking revenge or victimizing complainant (arts. 1 and 6).

17. The 2011 Law on Denunciations provides for denunciations and settlement of denunciations of violations committed by cadres, civil servants or public employees while performing their official tasks or duties; and by agencies, organisations or individuals

[4] See further in Annex 1.
[5] See further in para. 42.

relating to the State's management in various fields; protection of denunciators and management of denunciation settlement work (arts. 1, 4, 5, 8).

18. The 2014 Law on Organisation of National Assembly (Art. 33); the 2015 Law on Organisation of the Government (Art. 21), the 2014 Law on Organisation of the People's Courts (para. 1, Art. 2), the 2014 Law on Organisation of the People's Procuracies (para. 2, Art. 2; point b, para. 2, Art. 3; point b, para. 2, Art. 4), the 2014 Law on the People's Public Security Forces (para. 2, Art. 15), the 1999 Law on Viet Nam People's Army Officers (Art. 26), the 2004 Law on National Security (para. 6, Art. 13), the 2015 Law on Professional Military Personnel, and Defense Officials (Art. 7)[6] provide for responsibility of agencies and individuals in protection of human rights.

19. The protection of human rights and the right not to be subjected to torture have also been provided in the 2012 Labour Code, the 2014 Law on Marriage and Family, the 2007 Law on Domestic Violence Prevention, the 2006 Law on Gender Equality, the 2016 Law on Press, the 2012 Law on Trade Union, the 2008 Law on Vietnamese Nationality, the 2006 Law on Legal Aid, the 2009 Law on Medical Examination and Treatment, the 2004 Law on Child Protection, Care and Education, the 2005 Law on Education, the 1991 Law on Compulsory Primary Education, the 2008 Law on Cadres and Civil Servants and the 2010 Law on Public Employees and the 2016 Law on Access to Information.[7]

20. Viet Nam has become a State Party to 7 out of 9 fundamental human rights conventions and some protocols of these conventions. Viet Nam has participated in many other international conventions concerning human rights and international humanitarian laws[8] and is studying the possibility of joining the International Convention on Protection of All Persons from Enforced Disappearance (CPED), International Convention on Rights of Migrant Workers and Their Family (ICRMW), Convention on Status of Refugees (CSR), Convention on the Status of Stateless Persons (CSSP).

## B. Application of international treaties and their status in domestic legal system

21. Regarding the status of international treaties: according to para. 1, Article 6 of the 2016 Law on International Treaties and para. 5, Article 156 of the 2015 Law on Promulgation of Legal Normative Documents, in case there is conflict on one matter that is regulated by domestic legal normative documents and international treaty to which Viet Nam is a party, the international treaty shall be applied, except for the Constitution.

22. Regarding the application' s methods: in pursuant to para. 2, Article 6 of the 2016 Law on International Treaties, the National Assembly, the President and the Government while deciding to accept to be bound by an international treaty, also decide how to apply that treaty (i.e., directly or indirectly applying through incorporating the provisions of international treaties into domestic laws).

23. In accordance with the above-mentioned principle, the UNCAT is not a treaty that can be directly applied. Article 3 of the Resolution No. 83/2014/QH13 dated 28th November, 2014 of the National Assembly of the Socialist Republic of Viet Nam on ratification of the UNCAT clearly states: "The Socialist Republic of Viet Nam shall build and improve its legal system in conformity with the provisions of the UNCAT". Thus, Viet Nam shall incorporate provisions of the UNCAT into domestic legal system, especially the criminalisation of acts of torture and supplementation, amendment of provisions relating to investigation, prosecution, trial, serving imprisonment sentences, lodging complaints, denunciations, extradition, immigration management, deportation, return of nationals.

[6] See further in Annex 4.
[7] See further in Annex 4.
[8] See further in Annex 8.

# III. Competent authorities for monitoring the implementation of the Convention

## A. System of State agencies

24. Agencies in the State apparatus of Viet Nam shall be responsible for direct or indirect implementation of the UNCAT, namely:

25. The National Assembly exercises constitutional and legislative powers and supreme supervision of all State activities (Art. 69 of the 2013 Constitution), among which are powers to draft, make and amend laws; to exercise supreme power to supervise the observance of laws providing for prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

26. The Government exercises executive rights and is the executive agency of the National Assembly (Art. 94 of the 2013 Constitution); it is responsible for implementation of the UNCAT from central to grassroots levels, protection of social legal system, of human rights, combating injustice and wrongful acts in exercise of official tasks. The Government consists of 18 ministries and 04 ministry-level agencies and among those ministries, the ministries which have the main responsibility in implementing the UNCAT are Ministry of Public Security, Ministry of Justice, Ministry of Foreign Affairs, Ministry of National Defense, Ministry of Information and Communication.[9]

27. The People's Court is the judicial agency and exercises judicial rights. The People's Court has the duty to protect justice, protect human rights and citizens' rights, protect the socialist regime and protect the interest of the State and legitimate rights and interests of organisations and individuals (Art. 102 of the 2013 Constitution). The People's Courts consist of the Supreme People's Court, 03 Superior People's Courts, 63 Provincial People's Courts, 710 District People's Courts, 01 central military court, 09 military regional courts, 17 military area courts. The family and juvenile tribunal is established in accordance with the 2014 Law on Organisation of the People's Courts and Circular No. 01/2016/TT-CA dated 21th January, 2016 of the Chief Justice of the Supreme People's Court regulating on organisation of special tribunals. In 2016, the family and juvenile tribunal in Ho Chi Minh City was established).

28. The People's Procuracy is the agency that exercises the power of public prosecution, supervision of judicial activities all over Viet Nam. It has the duty to protect the Constitution and law, human rights and citizens' rights, the socialist regime, and protect the interest of the State and legitimate rights and interests of organisations and individuals, ensure the strict and consistent compliance with law (Art. 107 of the 2013 Constitution). System of the People's Procuracies is divided into 04 levels, including: the Supreme People's Procuracy, 03 Superior People's Procuracies, 63 provincial People's Procuracies, 710 district People's Procuracies; 01 central military Procuracy, 11 military region Procuracies, 28 military area Procuracies.[10]

## B. Specialised Agencies

### Investigation agencies

29. Pursuant to the Ordinance on Organisation of Criminal Investigation 2004 (amended, supplemented in 2006 and 2009), system of Investigation Agencies consists of the Investigation Agencies of the People's Public Security, the Investigation Agencies of the Ministry of Defence, the Investigation Agency of the Supreme People's Procuracy.[11]

- The Investigation Agencies shall conduct investigation of all offences, apply every measure prescribed by the Criminal Procedure Code in order to identify crimes and

[9] See further in Annex 6.

[10] Data is updated to June, 2016.

[11] See further in Annex 14.

its perpetrators, compile files, propose institution; find the causes, conditions of committing crimes and request the concerned agencies and organisations to apply remedial and preventative measures.

- The agencies tasked to conduct a number of investigation activities include the Border Guard, the Customs, the Forestry Inspection, the Coast Guard, other agencies of the People's Public Security or the People's Army, as defined in laws.[12]

30. The 2015 Law on Organisation of Criminal Investigation Agencies provides for the similar system of Investigation Agencies with tasks and powers more clearly such as to receive and settle denunciation and reports on crimes, to propose case institution; to receive case files transferred by agencies tasked to conduct a number of investigation activities…; adding the Fishery Surveillance Force into the agencies tasked to conduct a number of investigation activities.

**System of criminal judgment execution agencies**

31. The 2010 Law on Execution of Criminal Judgments[13] provides the following system of criminal judgment execution agencies:

- Administering agencies for execution of criminal judgments consist of criminal judgment execution management agency of Ministry of Public Security, criminal judgment execution management agency of Ministry of Defence.
- Criminal judgment execution agencies are: detention centers of the Ministry of Public Security, the Ministry of Defence and prisons of military zones; criminal judgment execution agencies of provincial-level police departments, criminal judgment execution agencies of district-level police offices; criminal judgment execution agencies of military zones.
- Agencies which are assigned some tasks of criminal judgment execution are: detention centers of the Ministry of Public Security, the Ministry of Defence, provincial-level police departments, military zones; People's Committee of communes, wards and townships; military units of regiment and equivalent levels.

**System of temporary detention centers and custody houses**

32. The 2015 Law on Execution of Temporary Custody and Detention provides 2 systems of agencies including: agencies having the authority to manage temporary custody and detention and agencies having the authority to execute temporary custody and detention.

- Organisation system of agencies managing temporary custody and detention includes:
    - The agencies managing temporary custody, detention in the People's Public Security are: the agencies managing the execution of criminal judgment and judicial assistance under the Ministry of Public Security; the criminal judgment execution agencies of Public Security at provincial level and district level.
    - The agencies managing temporary custody, detention in the People's Army are: the agencies managing the execution of criminal judgment under the Ministry of Defence; the agencies executing the criminal judgment of military zones; the Command of Border Guard at provincial level.
- Organisational system of agencies executing temporary custody, detention consists of temporary detention centers under the Ministry of Public Security; temporary detention centers under the Ministry of Defense; temporary detention centers of Public Security at provincial level and under the military zones and the equivalent; custody houses of Public Security at district level and of criminal investigation

[12] See further in Annex 14.
[13] See further in Annex 14.

agencies in the People's Army; temporary custody cells of border posts in the island and border far away from district administrative centers.

### C. The Viet Nam Fatherland Front and other organisations, individuals

33. The Viet Nam Fatherland Front is a political alliance and a voluntary union of the political organizations, socio-political organizations and social organizations, and prominent individuals representing their class, social strata, ethnicity or religion and overseas Vietnamese. Member organisations of the Viet Nam Fatherland Front and other social organizations shall represent and protect the lawful and legitimate rights and interests of the people; promote public consensus; conduct supervision and provide feedback of the society (Article 9 of the 2013 Constitution).[14]

34. Organizations and individuals have the right to participate in monitoring the implementation of laws, including this Convention. Ministries, ministerial-level agencies of the Government, government agencies, and People's Committees at all levels have the right to facilitate and encourage organisations and individuals' participation in the monitoring of the enforcement of laws. Depending on particular circumstances of the monitoring of the implementation of laws, Ministries, ministerial-level agencies of the Government, government agencies, and People's Committees at all levels shall mobilize Viet Nam Lawyer Association, Viet Nam Bar Association, the Viet Nam Chamber of Commerce and Industry, social associations, professional associations, organizations on research and training of experts and scientists to meet requirements for participating in the monitoring of the enforcement of laws (Art. 6 Decree 59/2012/ND-CP of 23th July 2012 of the Government on monitoring law execution situation).

## IV. Difficulties and challenges in implementation of the UNCAT

35. Viet Nam's achievements in the country's development over the last 70 years, especially in the protection of human rights, maintaining of political stability and appropriate economic and social development policies and trends, are the major grounds and advantages for Viet Nam in the UNCAT implementation process. However, besides those achievements, Viet Nam still faces some difficulties that need to be solved to implement the UNCAT more effectively, such as:

36. Incomplete legal framework on human rights.

37. Shortages in resources to promote sustainable development goals, social development and economic growth, environmental protection, reduce regional development gap.

38. The UNCAT is a convention on human rights which has complicated contents and involves various areas of the social life. Thus, the UNCAT should be implemented step by step, in accordance with the specific conditions and situation of Viet Nam. The introduction of the UNCAT to cadres and people has to be done regularly, continuously in a way that can be easily absorbed by the public. It is also required to have constantly, regularly legal and professional training and instruction for cadres and civil servants in order to enhance their capacity and knowledge, contributing to preventing the abuse of power.

39. Legal and professional capacities of public officers are not the same, so they may misunderstand the rights and duties of individuals. Thus, the cases which individuals abuse power during the process of exercising the State's duties still happen. This also causes certain problems for competent authorities in managing and training cadres.

40. In some local areas, due to the difficult economic life and low educational level of the people, especially in ethnic minority regions, the introduction of the UNCAT and relevant laws face more difficulties because of the differences in custom, culture and the translation of laws into ethnic languages …

[14] See further in Annex 5.

# Part II
# Substantive articles

### Implementation of Article 1

*The definition of torture in domestic law of Viet Nam*

41. The term "torture" and the prohibition of torture have been provided in the 2013 Constitution (Art. 20), the 2015 Criminal Procedure Code (Art. 10), the 2015 Law on Execution of Temporary Custody and Detention (Arts. 4, 8), the 2015 Law on Organisation of Criminal Investigation Agencies (Art. 14).

42. The 1999 Criminal Code (as amended and supplemented in 2009) has not a separate provision on offences of torture and definition of torture. However, every act which has torture nature, has been defined as criminal acts, and has been provided directly in crime of applying corporal punishment (Art. 298); crime of obtaining testimony by duress (Art. 299); crime of bribing or coercing other persons to make false declarations or to supply false documents (Art. 309). Acts of torture nature can also be prosecuted under other crimes such as: murder (Art. 93); causing death to people in the performance of official duties (Art. 97); coercing suicide (Art. 100); threatening to murder (Art. 103); inflicting injury on or causing harm to the health of other persons while performing official duty (Art. 107); ill-treating other persons (Art. 110); humiliating other persons (Art. 121); illegal arrest, custody or detention of people (Art. 123); insulting or assaulting commanders or superiors (Art. 319); humiliating or applying corporal punishment to subordinates (Art. 320); humiliating or assaulting companions-in-arms (Art. 321); ill-treating prisoners of war and/or enemy deserters (Art. 340).

43. The 2015 Criminal Code has widened criminal subjects and acts and increased punishment for acts relating to torture. Thus, it has been more conformed to the UNCAT's provisions and specific conditions and situation of Viet Nam, in particular, crime of applying corporal punishment (Art. 373); crime of obtaining testimony by duress (Art. 374); crime of bribing or coercing other persons to make false declarations or to supply false documents (Art. 384).

44. One new point in legal system of Viet Nam can be applied when dealing with torture cases is that, Viet Nam has accepted the choice and the application of legal precedents in adjudication.[15] The application of legal precedents is a progress, contributing to flexible and uniform application of law, especially in the field that may have different interpretations like law on human rights and law concerning torture. The Chief Justice of Supreme People's Court issued Decision No. 220/QD-CA of 6th April, 2016 and Decision No. 698/QD-CA of 17th October 2016 on announced precedents of the court.

*International instruments binding to Viet Nam or domestic legal documents may contain provisions of "wider" application than the definition of torture of the UNCAT.*

45. Viet Nam has become the member state of various international instruments on human rights (Viet Nam is member state of 7 out of 9 fundamental international treaties on human rights), including instruments that contain provisions on prohibition of torture like: the Universal Declaration on Human Rights 1948, the international Convention on Civil and Political Rights 1966, the Convention on the Rights of the Child 1989, the Convention on the Rights of People with Disabilities 2006.[16] However, none of them provide definition of torture as wide as the definition provided in the UNCAT.

[15] See further in Annex 1
[16] See further in Annex 8

**Implementation of Article 2**

**Paragraph 1: The measures of prevention and combat against acts of torture**

*Legislative measures*

46. To prevent acts of torture, Viet Nam has taken following legal measures: (i) Providing the right not to be tortured in the Constitution (Art. 20 of the 2013 Constitution); (ii) Implementing the right not to be tortured at Art. 20 of the 2013 Constitution and including provisions of the UNCAT into domestic legal system of criminal law, criminal procedure law, Law on Execution of Criminal Judgments, Law on Organisation of Investigation Agencies, administrative law ... and legal documents on human rights;[17] (iii) Studying the participation in other human rights treaties[18] and (iv) Providing new measures to prevent criminal acts including torture committed by public officials.

47. During the process of improving provisions of criminal law, criminal procedure law, Law on Execution of Criminal Judgments, Law on Organisation of Investigation Agencies, administrative law .... the National Assembly of Viet Nam has supplemented various new provisions to prevent infringement on law conducted by public officers for example: the 2015 Criminal Procedure Code provides for recording audio, video when interviewing the accused (Art. 183) and may record audio, video when receiving denunciations and reports on crimes and proposal of institution of criminal cases (Art. 146), in obtaining testimony (Arts. 187, 188, 442), in confrontation (Art. 189), in trial (Art. 258); the right to give statements and opinions, the right not to testify against themselves or admit to guilt of persons kept in emergency situation, persons held in temporary custody or detention, arrestees, persons held in temporary custody or detention, the accused, defendants, legal representatives of legal entities (Arts. 58, 59, 60, 61, 435); the right of defense counsels to participate from the time of arrest, engage in the activities of confrontation, identification, recognition of voice and petition for legal proceedings according to the law (Arts. 73, 80).[19]

48. The 2012 Law on Handling Administrative Violations prescribes 35 official positions having authority to make decision on the temporary custody of persons according to administrative procedures and places used for temporary custody of persons according to administrative procedures.

*Administrative measures*

49. The implementation of the UNCAT has been carried out at the same time with the execution of strategies on judicial reform and the promotion of administrative reform in Viet Nam. Therefore, Viet Nam has taken measures to simplify administrative procedures to eliminate circumstances that cadres may abuse public powers to cause disadvantages for people,[20] for example: the implementation of single window mechanism, one-stop-shop mechanism in the State's administrative agencies in all cities; forming national database for all public administrative services; setting up hotlines for opinion/complaint collection; applying new information technology in the services; launching website to perform administrative services in order to avoid personal contact between people and officers ...

50. Ministries and agencies have promulgated regulations on professional moral standards and responsibilities of cadres, civil servants as well as their prohibitions, in order to increase responsibilities of cadres, civil servants and to form ethic standards for public administration representatives.

*Judicial measures or other measures*

51. Depending on person and purpose of its application, deterrent measures in criminal proceedings have been divided into 2 groups: (i) the first one are general measures applied to all committed persons and only served as supporting measure for the punishment as

[17] See paras. from 6 to 19, from 83 to 90.
[18] See further in para. 20.
[19] See further in paras. 148, 149.
[20] See further in Annex 10.

stipulated in Art. 41, 42 and 43 of the 1999 Criminal Code (amended and supplemented in 2009), including: Confiscation of objects and money directly related to crimes; Return of property, remedies or compensation for damage; compelling to make public apologies; Compulsory medical treatment; (ii) the second one are deterrent measures applied to juvenile delinquents for the purpose of punishment replacement as stipulated in Art. 70 of the 1999 Criminal Code (amended and supplemented in 2009), including: Education at communes, wards or district towns; sending to reform schools.

52. In order to prevent crimes in time or when there are grounds proving that the accused or defendants would cause difficulties to the investigation, prosecution or adjudication, or they would continue committing offences, as well as when it is necessary to secure the judgment execution, competent agencies and authorities within the scope of their jurisdiction may apply one of the following deterrent measures: arrest, temporary custody, detention, ban from travel outside one's residence, guaranty, deposit of money or valuable property as bail (Chapter VI of the 2003 Criminal Procedure Code). This regulation has been supplemented and amended in Chapter VII of the 2015 Criminal Procedure Code, including: holding persons in emergency situation, arrest, temporary custody, detention, bail, surety, residential confinement, exit restriction ... Apart from that, Chapter XXXVI of the 2015 Criminal Procedure Code also provides preventive measures that enable the consideration of requisitions for extradition or execution of extradition (Art. 502).

53. Under the 2003 Criminal Procedure Code, the arrest warrant issuers and the arrestee-receiving Investigation Agencies must immediately notify the arrests to the arrestee's families, the administration of the communes, wards or townships where the arrestees reside or the agencies or organisations where they work. If such notification can impede the investigation, after the impediment no longer exists, the arrest warrant issuers of the arrestee-receiving Investigation Agencies must immediately effect such notification (Art. 85).

54. In the 2015 Criminal Procedure Code, there are new and more progressive provisions on judicial measures or other measures compared with the 2003 Criminal Procedure Code, for example: upon holding person in custody, arresting persons, acquisition of arrestees and detainees, competent authorities or persons have to inform their family members, organization, educational facility or local authorities in the commune, ward or town where they reside; if detainees and arrestees are foreigners, Vietnamese diplomatic authorities must be informed to deliver notices to diplomatic missions of countries whose nationals are detained or arrested. If such notice obstructs the pursuit of suspects or investigating activities, investigation authorities taking in detainees and arrestees shall release notices after such obstructions suspend to exist (Art. 116). Investigation authorities must inspect identity documents of persons held in temporary detention and inform their family members, workplace, educational facility or local authorities in the commune, ward or town where they reside (Art. 119). Persons kept in emergency situation or arrestees for criminal acts in flagrante and wanted notices are entitled to demand defense counsel engage in legal proceedings since it is initiated in order to ensure their benefits, including right not to be subjected to applying corporal punishment or obtaining testimony by duress (Art. 74).

55. The period of temporary detainment/custody shall not exceed 03 days. If necessary, it can be extended for 03 days as maximum and in special events, it can be given second extension for at most 3 more days as maximum. Extension of temporary detainment must be approved by the equivalent Procuracy or a competent Procuracy. If grounds for prosecution do not suffice during the period of temporary detainment, the detainees on temporary detainment must be promptly discharged. The time spent in temporary custody shall be subtracted from the time spent in temporary detention. One day spent in temporary custody is counted as one day's credit toward the time passed in temporary detention (Art. 87 of the 2003 Criminal Procedure Code and Art. 118 of the 2015 Criminal Procedure Code).

56. The time limit for temporary detention of suspects for investigation shall not exceed 02 months for less serious offences, not exceed three months for serious offences, not exceed four months for very serious offences and especially serious offences. The extension

of temporary detention is carried out in accordance with legal provisions (Article 120 of the 2003 Criminal Procedure Code and Article 175 of the 2015 Criminal Procedure Code). The progresses of the Criminal Procedure Code 2015 comparing to the 2003 Criminal Procedure Code are: the extension of temporary detention reduced from 2 times to 1 time for serious offences and very serious offences, from 3 times to 2 times for especially serious offences, hence, decreasing total duration of temporary detention for detainees. This is a progress of the Criminal Procedure Code in protecting the right of the accused.

57. Decree No. 89/1998/ND-CP dated 7th November, 1998 of the Government issuing Regulation on temporary custody and detention and Decree No. 98/2002/ND-CP dated 27th November, 2002 of the Government amending and supplementing a number of articles of the regulation on temporary custody and detention of the government's Decree No. 89/1998/ND-CP dated 7th November, 1998 provide that:

- When receiving persons held in temporary custody and detention, heads of custody houses and supervisors of detention centers shall carry out the following procedures: examine the temporary custody orders, detention orders, wanted orders and other documents and to go through other necessary procedures to ensure detainment and keeping in custody of the right persons and in conformity with law; make records on the receipt of dossiers as well as persons held in temporary custody and detention, at the same time to ascertain the state of their health; make identification and name slips, photographing and to make entry in the registry to follow up lists of persons held in temporary custody and detention; disseminate the internal rules of custody houses or detention centers to persons held in temporary custody and detention, to check their body and their belongings before taking them to custody or detention rooms. Body check of male held in temporary custody or male detainees shall be made by male officials and of female held in temporary custody or female detainees by female officials and shall be carried out in private rooms (Art. 16).
- Detention and custody shall be kept and held in different areas and classified as follows: women; minors; foreigners; persons contracted dangerous contagious diseases .... Foreigners who are held in custody houses or detention centers may be detained or kept in separate rooms in custody houses or detention centers (Art. 15).
- Regimes on food, accommodation, medical care, activities, visit ... for persons held in temporary custody or detention have been provided in detail.[21]

58. The 2015 Law on Execution of Temporary Custody and Detention has some provisions which are more progressive than before, for example:

- The persons held in temporary custody or detention are arranged in areas and classified as follows: (i) persons held in temporary custody or detention; persons under 18 years old; women; foreigners; persons committing criminal acts with delinquent nature; murder; robbery subject to the type of particularly serious crime; dangerous recidivism; persons committing acts of national security infringement; persons waiting for execution of imprisonment; persons regularly breaching the rules of custody facility; (ii) Persons with infectious diseases of Group A; persons sentenced with death penalties; persons with signs of mental illness or another illness which causes the loss of ability to perceive or ability to control their acts but have not been assessed, waiting for the results of the assessment or being sent to the compulsory medical facilities.
- The persons held in temporary custody or detention who are gays/lesbians, transgender people; pregnant women or women having child under 36 months of age sharing the same cell; persons with infectious diseases of Group A; persons sentenced with death penalties; persons with signs of mental illness or another illness which causes the loss of ability to perceive or ability to control their acts but have not been assessed, waiting for the results of the assessment or being sent to the compulsory medical facility can be detained in separate cells.

[21] See further in para. 158.

- This new law reserves one chapter (Chapter V) to regulate on benefits of the persons held in temporary custody or detention who are under 18 years of age, pregnant women or women with children under 36 months of age.

*The effectiveness of the measures taken to prevent torture*

59. Even before ratifying the UNCAT, Viet Nam has respected and protected human rights values by promulgation of policies, laws on human rights protection and implementation in reality. The participation in the UNCAT is one of important progress of the Socialist Republic of Viet Nam, continuing process of building, improving regimes, policies and protection of human rights including the right not to be subjected to torture. This is also a chance for competent authorities to take uniform preventive measures and other measures fighting against torture so as to prevent torture from being practiced in the territory of Viet Nam. The effectiveness of these measures can be recognized as following:

- Right from the time of studying the UNCAT's accession, the Drafting Committee of the Criminal Code, the Criminal Procedure Code, the Law on Execution of Temporary Custody and Detention, etc. has studied and proposed the transformation of provisions of the UNCAT into internal laws. The results can be seen in provisions of laws, which are adopted in 2015. Hence, Viet Nam has actively transformed the provisions of the UNCAT into internal laws in the first year after becoming State Party of the UNCAT.
- Viet Nam has made action plan and introduced the UNCAT and relevant provisions of Vietnamese laws all over the countries. Ministries and agencies at different levels make plans on implementation of the UNCAT.[22]
- In Viet Nam, crimes having torture nature are not popular, accounting for a small proportion in overall crimes committed. From 2011 to 2015, the People's Courts have handled and tried in the first instance 10 cases of applying corporal punishment, there haven't got any case of offence of obtaining testimony by duress or offence of bribing or coercing other persons to make false declarations or to supply false documents. According to statistics in 2010 and 2011, there was no case; in 2012, there were 4 cases (0.0061% of total cases tried); in 2013, there was 01 case (0.003% of total cases tried in the first instance); in 2014 there were 3 cases (0.0045% on total cases tried in the first instance); in 2015 there were 02 cases (0.0033% on total cases tried in the first instance).

**Paragraph 2**

*Legal provisions of right not to be subjected to torture is not derogated even in the cases of the state of emergency or anti-terrorism*

60. According to provisions of paragraph 2 of Article 14 of the 2013 Constitution, human rights, citizen rights are only restricted under legal provisions in necessary cases for reason of national defence, national security, social order and safety, social morality, community health.

61. The 2013 Law on Anti-terrorism provides that acts of preventing and fighting of terrorism have to comply with the Constitution and laws; ensure and protect legitimate rights and interests of agencies, organisations and individuals; protect the safety of human lives and health (Art. 4); prohibit abusing position and/or power in anti-terrorism to infringe upon lawful rights and interests of organisations or individuals (Art. 6); the investigation, prosecution and trial of terrorism and terrorist financing crimes shall comply with the Criminal Code, the Criminal Procedure Code and other relevant laws (Art. 9).

62. Para. 6, Article 2 of Decree No. 71/2002/ND-CP dated 23rd July, 2002 of the Government on the implementation of a number of articles of the Ordinance on the State of Emergency in case of disasters or dangerous epidemics, strictly prohibits the taking of

[22] See further in Annex 13.

advantage of the state of emergency to infringe upon rights and legitimate interests of agencies, organisations and individuals.

63. Under Vietnamese laws, in any case, even in state of emergency and in case of anti-terrorism, fundamental human rights, including the right not to be subjected to torture, are protected and all acts of State's authorities in emergency case or anti-terrorism situation have to obey laws concerning human rights' protection.

**Paragraph 3**

*Provisions relating to the implementation of superior order and direction in the State' agencies*

64. Article 30 of the 2014 Law on the People's Public Security Forces provides obligations and responsibilities of People's Public Security officers, non-commissioned officers to strictly obey directions and directives and orders of their superiors. However, this law also provides that upon receipt of commanders' orders, if having grounds to believe that such orders are unlawful, officers have to immediately report them to the persons who have issued the orders; if still having to obey the orders, officers have to promptly report them to the immediate superiors of the order issuers and to bear no responsibility for the consequences of the execution of such orders.

65. Para. 3, Art. 27 of the 1999 Law on Viet Nam People's Army Officers, (as amended and supplemented in 2008 and 2014) also provides the similar principles.

66. The 2008 Law on Cadres and Civil Servants (para. 6, Art. 9) provides that cadres and civil servants directions are responsible for implementing decisions of their superiors. When having grounds to believe that such decision is illegal, the implementer has to immediately report in writing to its issuer; the issuer who upholds his/her decision shall issue a document to this effect while the implementer shall implement the decision but is not held responsible for implementation consequences, and shall report to the immediately higher authority of the decision issuer. The person who issues a decision shall take responsibility before law for his/her decision.

67. Regulations of Viet Nam in this situation have not fully met the requirements of the UNCAT. However, at present, no case has been reported in Viet Nam that "superior order" was invoked as a justification of torture.

**Implementation of Article 3**

*Deportation*

68. Deportation is the major or supplementary punishment which is regulated at Article 28 of the 1999 Criminal Code (as amended and supplemented in 2009) and Article 32 of the 2015 Criminal Code or is a form of administrative violation handling which is regulated at Article 27 of the 2012 Law on Handling Administrative Violations.

69. Compelled exit is a measure stipulated in para. 8, Article 3 of the 2014 Law on foreigners' entry into, exit from, transit through and residence in Viet Nam. A foreigner may be compelled to exit Viet Nam in the following cases: his or her temporary residence duration has expired but he/she does not leave Viet Nam or for the reason of national defence, security or social order and safety (para. 1, Art. 30). Since this Law's entry into force (1st January, 2015), Viet Nam has not compelled any foreigners to exit the country.

70. The 2012 Law on Handling Administrative Violations specifically provides procedure and power for expulsion in accordance with administrative procedure.

71. The 2010 Law on Execution of Criminal Judgements defines specifically principle, procedure, organisation, duty, power of the authorised agencies in the execution of deportation penalty; rights, duties of the person who was charged with deportation penalty; duties of organs, organisations, individuals concerning the execution of deportation penalty.

72. In accordance with the Inter-Agency Circular No. 07/2011/TTLT-BCA-BQP-BNG dated 16/11/2011 of Ministry of Public Security — Ministry of Defence — Ministry of

Foreign Affairs on the execution of the deportation penalty, this penalty is imposed on offenders who are foreigners and force those persons to leave the territory of Viet Nam in a certain time. Deportation penalty may be applied to foreigners committing any offences, which are provided in the Criminal Code. In certain circumstances and considering all details of a case, if the application of expulsion penalty is necessary and for the purpose of penalty, the court may apply deportation to the criminal offender.

73. From 2011 to 2016, the Vietnamese Ministry of Public Security has executed criminal deportation of 54 persons in accordance with decisions of the Court; deported 167 persons in accordance with administrative procedure.[23]

74. The law of Viet Nam does not have specific provision on non-expulsion cases when there is a ground to believe that deported person shall be tortured. However, when deciding to apply expulsion penalty, the court or competent person has to consider benefits of the deported person, provisions of domestic law or international law including Article 3 of the CAT in order to have the right decision.

*Extradition*

75. Extradition is regulated in the 2003 Criminal Procedure Code, the 2015 Criminal Procedure Code and the 2007 Law on Mutual Legal Assistance and in 13 treaties on mutual legal assistance on criminal, civil, marriage and family matters and 12 treaties on extradition... which Viet Nam has concluded or is expected to conclude with other countries.[24] Most of the above-mentioned treaties specifically stipulate extradition refusal when there is suspicion that the person whose extradition is sought may suffer torture and other cruel, inhuman or degrading treatment or punishment in the requesting state. Besides, point d, para. 1, Art. 344 of the 2003 Criminal Procedure Code and point d, para. 1, Art. 35 of the 2007 Law on Mutual Legal Assistance specifies cases of extradition refusal, including the denial case for the reason the requested person is residing in Viet Nam may be subjected to torture or coercion in the requesting state because of the discrimination on race, religious, sex, nationality, ethnicity, social position and political view.

76. Therefore, even before ratifying the UNCAT, the provision of extradition refusal when there is a suspicion the person whose extradition is sought may be subjected to torture or coercion in the requesting state has been established in extradition treaties of which Viet Nam is a signatory and draft extradition treaties between Viet Nam and foreign countries.

77. From 2012 to 2016, all extradition requests that Viet Nam has sent to other countries[25] guarantee that the person whose extradition is requested shall not be tortured or suffered other cruel, inhuman or degrading treatment or punishment or prosecuted on account of that person's race, religion, sex, nationality, gender, ethnic origin, social position or political opinion. At the same time, Viet Nam also requests the requesting state to ensure the similar conditions.[26]

*Transfer of sentenced person*

78. Concerning the transfer of sentenced person: the 2007 Law on Mutual Legal Assistance provides the transfer shall be refused if there exist grounds to believe that the sentenced person would be subjected to torture, retaliation or suppression in the receiving state (para. 1, Art. 51). Besides, from 2012 to 2016, Viet Nam has signed 02 treaties on transfer of sentenced person with the Republic of Hungary (2013) and the Democratic Socialist Republic of Sri Lanka (2014)[27] containing provision of transfer refusal when there exist grounds to believe that the sentenced person would be subjected to torture, retaliation or suppression in the receiving state of which that person is a national.

79. The surrender of foreign offenders: authorized organs of the Vietnamese Ministry of Public Security, on the basis of Constitution of the International Criminal Police

[23] Data is updated to February, 2016.
[24] See further in Annex 8.
[25] See further in Annex 12.
[26] See further in Annex 12.
[27] See further in Annex 8.

Organisation (INTERPOL), will examine, identify offenders who are located in Viet Nam and wanted by foreign authorities, international police and cooperate with related offices to conduct necessary procedures in order to hand over them to the foreign authorities. In 2015, agencies under the Vietnamese Ministry of Public Security have handed over 32 persons on the INTERPOL wanted list.

80. At present, Viet Nam has not experienced any torture-related expulsion, transfer or extradition cases.

81. In the area of mutual legal assistance in criminal matters, criminal legal mandates of foreign countries shall be rejected to perform if "they do not conform to treaties to which Viet Nam is a contracting party" (subparagraph a, paragraph 1, Article 21 of the 2007 Law on Mutual Legal Assistance). When there is a need to transfer persons who are serving their imprisonment sentence for supply of evidence, competent bodies of the requesting countries shall commit in writing to ensure their life safety, health, accommodation and meal, travel conditions, duration and mode of receipt and return as well as other specific conditions related to the transfer as proposed by competent proceedings-conducting agencies of Viet Nam (subparagraph b, para. 2, Article 25 of the 2007 Law on Mutual Legal Assistance) in order to avoid the punishment or torture of the requested state.

*Introduction of training/education tasks for officers in charge of expulsion, return or extradition of foreign offenders*

82. The Police General Department of the Ministry of Public Security has organised the training courses on the Guidance No. 65 dated 05/01/2011 on INTERPOL, ASEANAPOL for cooperation on handling Viet Nam-related foreign and transnational cases and Guidance No. 2454 dated 12/7/2011 on the international wanted tasks by Interpol channel and organisation of training courses on these two Guidance documents for police officers at the central and local levels.

**Implementation of Article 4**

*Duty to ensure all acts of torture nature are criminal under national criminal law in conformity with definition of Article 1.*

83. As emphasized in paragraph 42 of this Report, the 1999 Criminal Code (as amended and supplemented in 2009) does not provide the definition of torture and torture offences, however, acts of torture nature according to the definition in Article 1 of the UNCAT are provided in articles of the 1999 Criminal Code and offenders must take criminal liability.

84. The sentence term for offences in general as well as torture offences is provided in Article 23 of the 1999 Criminal Code (amended and supplemented in 2009) and Article 27 of the 2015 Criminal Code as follows: Five years for less serious crimes; Ten years for serious crimes; Fifteen years for very serious crimes; Twenty years for especially serious crimes.

85. Provisions regarding torture offences in the 2015 Criminal Code were amended and supplemented as follows:

86. Amending the offences for applying corporal punishment (Art. 373):

- Supplementing the act of cruel, degrading treatment to another person is constitution of this crime in order to cover acts of mental torture;
- Widening the provision for applying corporal punishment offences applicable to any person in the course of proceedings, sentence execution, or implementation of measures, including mandatory attendance at a correctional institution or rehabilitation center, detoxification facilities;
- Concretizing sentence bracket of aggravating factors and adding a new paragraph (para. 4) to aggravate criminal responsibility for a penalty of 12-20 years imprisonment or life imprisonment in case the offence results in the death of the tortured person.

87. Amending the obtainment of testimony by duress (Art. 374):

- Expanding the provision for this offence applicable to not only authorised persons in questioning of suspects, defendants in criminal cases but also authorised persons in the course of interview for obtaining testimony of witnesses, victims, and other related persons in criminal, civil, labour, and administrative cases etc. ...;
- Concretizing sentence bracket of aggravating factors, including the acts of applying corporal punishment or cruel, degrading treatment to the persons who are taken the testimony or statements or interviewed; adding a new paragraph (para. 4) to aggravate criminal responsibility for a penalty of 12-20 years imprisonment or life imprisonment in one of following cases: causing the death of the tortured person; wrongful conviction of an innocent person; omission of a very serious crime or especially serious crime.

88. Amending, supplementing the offences of bribing or forcing another person to give testimony or provide documents (Art. 384):

- Amending the provision for offences not only applicable to bribing or forcing related persons to give false testimony or provide false documents but also to bribing or forcing them not to declare or provide documents for the handling of criminal cases;
- Expanding the provision on definition of persons who are bribed or forced to give testimony or provides documents: witnesses, victims, litigants in a criminal, administrative, civil, economic, labour cases, experts or valuators, translators or interpreters;
- Adding the aggravating factors for acts which results in misjudgement of the case.

89. Other related offences are also amended, supplemented: "the offence involves abuse of the offender's position or power" is an aggravating factor, including offences: threat of murder (Art. 133); deliberate infliction of bodily harm upon another person (Art. 134).

90. At the same time, the aggravating factors of criminal responsibility of offences of illegal arrest, detention or imprisonment of a person (Art. 157) are also supplemented the factor: "torture, cruel, inhuman or degrading treatment or punishment or destroying the victim's dignity".

*Legal responsibility for complicity acts or participation in torture crime or above-mentioned related crimes.*

91. Accomplice is provided at Article 20 of the 1999 Criminal Code (as amended and supplemented in 2009) and Article 17 of the 2015 Criminal Code. Accomplice is a situation in which two or more people deliberately commit a certain crime. The accomplice is responsible for his/her criminal liability, however, shall not take criminal responsibility for unjustified force used by the perpetrator. Accomplices comprise of organizer, perpetrator, instigator, or abettor. Therefore, a person who has complicity acts or participation in torture-characterized offences and related offences must take criminal responsibility for his/her crime on the basis of nature and degree of participation.

*Current provisions on application of discipline measures in the process of investigating a torture case to a law executive officer who is accused of conducting torture acts*

92. Decree No. 34/2011/ND-CP dated 17/5/2011 of the Government on discipline measures to civil servants and Decree No. 27/2012/ND-CP dated 06/4/2012 of the Government on discipline measures to public employees and responsibility of compensation, refund of public employees, containing forms of discipline measures as follows: reprimand, warning, wage reduction, demotion and dismissal. Accordingly, civil servants, public employees shall face discipline measures if they violate prohibitions under the 2008 Law on cadres and civil servants and the 2010 Law on public employees. However, if civil servants and public employees are suspected or accused of violations but there is not conclusion of authorized investigation, prosecution and court agencies, they shall not be disciplined. The civil servant is the head of office, organisation where occur

serious violations without any measure of prevention shall be subject to discipline form of demotion (Art. 12 of Decree No. 34/2011/ND-CP). This provision also applies to the officers who were accused of torture acts. It means that the discipline measure is not imposed when there have not been decision of competent authority on illegal acts of those persons. Civil servants or public employees working in different departments committing acts of violation shall be subject to discipline measures mentioned above.

93. There are special provisions applicable to some special agencies, for example:

94. For investigators: in accordance with Article 56 of the 2015 Law on Organisation of Criminal Investigation Agencies, the title of investigator shall automatically be removed when they are convicted under legally effective court judgments or are subject to the discipline measure of strip of the People's Public Security title or People's Army officer rank or dismissal. Depending on the nature and severity of their violations, investigators may be removed from the title of investigator if their violations fall into one of the following cases: violate the investigation of criminal cases; violate the prohibition provisions which covers forms of torture or inhuman or degrading treatment and punishment or humiliation or any acts infringing upon the legitimate rights and interests of agencies, organisations and individuals; to be subject to the discipline measure of dismissal in accordance with the law on cadres and civil servants; violate the regulations on ethical quality.

95. For People's Public Security forces, officers and non-commissioned officers shall not use the public-security insignias, stripes and badges when criminal cases are instituted against them or they are held in temporary custody or detention (Article 42 of the 2014 Law on People's Public Security Forces).

96. For People's Army Forces, officers shall temporarily not wear shoulder straps when being prosecuted, held in temporary custody or detention; officers sentenced to imprisonment shall be automatically stripped of their army ranks when the judgments take legal effect (Article 49 of the 1999 Law on Viet Nam people's Army officers, amended and supplemented in 2008 and 2014).

97. For officers of People's Procuracies: cadres, civil servants, public employees and other employees of People's Procuracies shall perform their duties, exercise their powers and be held responsible before law for the performance of their duties and powers (Article 59 of the 2014 Law on Organisation of People's Procuracies). Procurators shall be automatically dismissed when they are convicted by a court under legally effective judgments. Besides, according to the seriousness of violations, procurators may be dismissed in one of the following cases: committing a violation in exercising the power to prosecute and supervise judicial activities; violating the provisions of Article 84 of the 2014 Law on Organisation of People's Procuracies; violation of ethical qualities; committing another illegal act.

98. For judges: Judges shall take responsibility before law for their performance of duties, powers and decisions. Depending on the seriousness of violations, judges committing illegal acts shall be subject to discipline measures or prosecuted under provisions of law (Article 77 of the 2014 Law on Organisation of People's Courts). Judges shall be automatically dismissed when they are convicted by a court under legally effective sentences. Besides, depending on the nature and seriousness of their violations, judges may be dismissed when: committing a violation in the adjudication or when addressing matters under the jurisdiction of their court; violating the provisions on prohibited acts of judges in Article 77 of the 2014 Law on Organisation of People's Courts; violating ethical qualities; violating the professional code of conduct and ethics of judges; committing another illegal act. Moreover, the Supreme People's Court is drafting the regulation on the handling of persons with judicial titles in People's Courts to tighten rules, discipline and to increase their responsibility.

99. For persons authorized to conduct certain activities of investigation in the forestry and customs sectors: in accordance with provisions of the law, these persons may be civil servants or public employees. Therefore, the current provisions on discipline measures to these persons are specified by Decree No. 34/2011/ND-CP dated 17/5/2011 of Government providing the discipline measures to civil servants and Decree No. 27/2012/ND-CP dated

06/4/2012 providing the discipline measures to public employees and liabilities for compensation and refund of public employees as mentioned at the paragraph 92 of this Report.

**Statistics on torture-related cases**

100. From 2010 to 2015, People's Courts had not handled any cases regarding the obtainment of testimony by duress and bribing or forcing another person to give false testimony or provide false documents; Courts had handled and tried 10 cases with the total 26 defendants who committed torture offences. In 2010: there were 0 case and 0 defendant/52.545 criminal cases and 88.967 defendants (0%); in 2011: 0 case and 0 defendant/58.277 criminal cases with 100.667 defendants (0%); in 2012: 4 cases and 8 defendants/64.935 criminal cases with 116.907 defendants (0,006%); in 2013: 1 case and 2 defendants/66.107 criminal cases with 117.502 defendants (0,0015%); in 2014: 3 cases and 7 defendants/65.858 criminal cases with 118.372 defendants (0,0045%); in 2015: 2 cases and 9 defendants/59.196 criminal cases with 106.078 defendants (0.0033%).[28]

**Implementation of Article 5**

*Measures to establish jurisdiction of Viet Nam*

101. The jurisdiction over crimes carrying torture acts is provided in Viet Nam's law, specifically Articles 5 and 6 of the 1999 Criminal Code (as amended in 2009) which applies to all acts of criminal offences committed in the territory of Viet Nam, regardless of whether such acts are committed by Vietnamese nationals or foreigners. For foreigners who commit offences in the territory of Viet Nam but are entitled to diplomatic immunities or consular privileges and immunities under Vietnamese laws, international treaties which Viet Nam has signed or acceded to or under international practices, their criminal liabilities shall be settled through the diplomatic channel. Vietnamese nationals or stateless persons permanently residing in Viet Nam and committing offences outside the territory of Viet Nam may be examined for penal liability in Viet Nam according to the provisions of the Criminal Code. Foreigners committing offences outside the territory of Viet Nam may be examined for penal liability in circumstances provided for in the international treaties to which Viet Nam has signed or acceded.

102. Besides, Articles 171 and 172 of the 2003 Criminal Procedure Code stipulate that the courts competent to adjudicate criminal cases are the courts of the places where the offences were committed. If an offence is committed in different places or if the place where an offence was committed is not identified, the court competent to adjudicate the case shall be the one of the place where the investigation is completed. Offences committed on board an aircraft or a sea-going ship of Viet Nam operating outside the airspace or territorial seas of Viet Nam shall fall under the jurisdiction of the Vietnamese courts of the places of the first return airports or seaports or the places where such an aircraft or sea-going ship is registered.

103. The Criminal Code of 2015 succeeds to the provisions of the 1999 Criminal Code (as amended in 2009) and contains the following amendments:

- Regarding the effect of the Criminal Code on criminal offences committed within the territory of Viet Nam:
    - Supplementing the effect of the Criminal Code on criminal offences committed on sea-going vessels and airplanes bearing Vietnamese nationality: the 2015 Criminal Code applies to every criminal offence committed within the territory of Viet Nam. It also applies to criminal offences committed on sea-going vessels and airplanes bearing Vietnamese nationality or operating in Viet Nam's exclusive economic zones or continental shelves.

[28] See further in Annex 11.

- Providing the application of the 2015 Criminal Code to foreigners who commit criminal offences within the territory of Viet Nam: the criminal liability of foreigners who commit criminal offences within the territory of Viet Nam and are granted diplomatic immunity according to Viet Nam's law or under an international agreement to which Viet Nam is a signatory or according to an international practice shall be dealt with in accordance with that international agreement or international practice. If the case is not set out in any international agreement or there is no such international practice, their criminal liability shall be dealt with through the diplomatic channel.

- Regarding the effect of the 2015 Criminal Code on criminal offences committed outside the territory of Viet Nam:

  - Supplementing the effect of the 2015 Criminal Code on Vietnamese corporate legal entities committing offences outside the territory of Viet Nam.

  - Supplementing the effect of the 2015 Criminal Code on foreign corporate legal entities committing offences outside the territory of Viet Nam and supplementing some cases in which criminal liability may be examined.

  - Supplementing provisions applied to an airplane or a sea-going vessel not bearing Vietnamese nationality outside Viet Nam's territory.

104. Regarding the trial jurisdiction, compared to the 2003 Criminal Procedure Code, the 2015 Criminal Procedure Code supplements the following provisions: The provincial People's Court at the last residential place of a defendant committing a crime abroad shall have jurisdiction if such person is tried in Viet Nam. If a defendant's last residential place in Viet Nam is unknown, the Chief Justice of the Supreme People's Court shall, as the case may be, decide to assign the People's Court of the city of Hanoi or the city of Ho Chi Minh or the city of Da Nang to hear the case. A defendant committing a crime abroad, if falling within the jurisdiction of a military court, shall be tried by the military court of a military zone as per the decision by the President of the central military court.

*Measures may be carried out to establish jurisdiction over cases in which offenders are not extradited to other states.*

105. The 2015 Criminal Procedure Code provides the handling of cases in which the extradition of Vietnamese nationals is refused (Art. 498). Accordingly, Vietnamese competent authorities shall be held responsible for considering requests by foreign competent authorities to initiate criminal prosecution or enforce a foreign Court's criminal sentences and rulings against Vietnamese nationals whose extradition is refused.

106. Article 29 of the 2007 Law on Mutual Legal Assistance specifically provides how to consider requests of competent bodies of foreign countries for further penal liability examination of Vietnamese nationals who committed crimes overseas and are present in Viet Nam. Extradition treaties to which Viet Nam is a signatory also provide duty to examine criminal liability when refusing extradition for the nationality reason of the requested person. On the basis of related provisions, the Vietnamese competent authority shall establish its jurisdiction.

107. Diplomatic measure: when refusing to extradite an alleged offender who is present in the territory of Viet Nam in cases provided by law, Vietnamese competent authorities, apart from applying legal measures to examine criminal liability of that person in Viet Nam as mentioned above, also apply measures through diplomatic missions and representative offices, consular offices, external relations offices to inform foreign counterparts about the jurisdiction of Viet Nam over the person who committed that crime. Besides, procedure-conducting agencies may conduct the consultation, negotiation, exchange of related information and cooperation with foreigner parties to combat crime effectively.

108. Measures in criminal proceedings:

- Deterrent measures: in case of extradition refusal and in order to perform the examination of criminal liability in the territory of Viet Nam, Vietnamese competent

authorities may apply one of the deterrent measures provided at Article 79 of the 2003 Criminal Procedure Code including: arrest, temporary custody, detention, ban from travel outside one's residence place, guarantee, depositing money or valuable property as bail. Following the entry into force of the 2015 Criminal Procedure Code, Vietnamese competent authorities may apply one of the deterrent measures provided at Article 109 of the 2015 Criminal Procedure Code, including: holding persons in emergency situations, arrest, temporary custody, detention, guarantee, bail, ban from travel outside one's residence place, exit restriction.

- Conducting the recognition and execution of the foreign court's criminal sentences in Viet Nam: Article 500 of the 2015 Criminal Procedure Code allows the recognition and execution of the foreign court's criminal sentences in Viet Nam in case of extradition refusal of Vietnamese nationals who committed crimes overseas, were sentenced by the foreign competent court's final decision or were executing imprisonment penalty abroad but escape to Viet Nam.

109. Until now, Viet Nam has not received and executed any extradition requests concerning torture.[29]

**Implementation of Article 6**

*Legal provisions of Viet Nam regarding the arrest, custody of foreigners or other measures to ensure the presence of foreigners who are charged with torture offences.*

110. The application of deterrent measures to foreign offenders in the territory of Viet Nam is similar to Vietnamese offenders. Cases of arrest include: arrest of persons held in emergency situations, arrest of perpetrators of crimes in red-handed cases, apprehension of wanted persons, apprehension of suspects and defendants for detention, and arrest of persons whose extradition is requested.[30]

111. Concerning the power of investigation, prosecution and hearing, Investigation Agencies, People's Procuracies and People's Courts[31] are bodies entitled to investigate, prosecute and try the alleged offenders of torture acts. The basis of constitution of crime and facts of criminal case, power of investigation, prosecution and trial shall be empowered to Investigation Agencies, People's Procuracies and People's Courts at corresponding level according to the 2003 Criminal Procedure Code or the 2015 Criminal Procedure Code when it enters into force.

112. The notification and organization of consular visit and contact which are applied to diplomatic missions and consular offices in Viet Nam, prisons, detention centers, foreign prisoners in Viet Nam and the related agencies, organizations and individuals are conducted according to provisions of the Inter-Ministerial Circular No. 03/2012/TTLT-BCA-BQP-BNG dated 13/02/2012 of Ministry of Public Security, Ministry of Defense and Ministry of Foreign Affairs guiding the consular visit and contact with foreign prisoners and complying with international treaties of which Viet Nam is a member including the Vienna Convention on Consular Relations 1963. Diplomatic and consular officers may visit and contact with their nationals who are prisoners in prisons, detention centers after receiving permission paper granted by the authorized offices in charge of executing criminal judgements of Ministry of Public Security or Ministry of Defense. The prisoners are allowed to have consular visit and contact once a month and not lasting more than 1 hour for normal case, not more 2 hours for special case. The 2015 Criminal Procedure Code provides when foreign nationals are arrested or detained, authorized offices and persons have to inform the diplomatic authorities of Viet Nam and these authorities must deliver notices to diplomatic missions of countries whose nationals are detained or arrested (Art. 116).

113. From 2011 to the end of 2015, there were 85 times representatives of diplomatic missions in Viet Nam conducted consular visit or contact with 1,526 prisoners; about 20

[29] See further in Annex 12.
[30] See further in paras. 52, 54, 108.
[31] See further in paras. from 27 to 30.

delegations of international organizations visited prisons and contacted with foreign prisoners; there were 796 visits of family members with foreign prisoners.[32]

*Provisions concerning the procedure, order, power... to inform other states*

114. Forms of notification include:

- Through diplomatic missions, consular offices: notification to other concerning countries about the cases involving foreign elements may be conducted through Ministry of Foreign Affairs of Viet Nam. This function was provided in Decree No. 26/2017/ND-CP dated 14/3/2017 of the Vietnamese Government defining function, tasks, power and organizational structure of the Ministry of Foreign Affairs. The general procedure is: (i) in case of notice to competent agencies of other countries, notice may be delivered through the Ministry of Foreign Affairs of Viet Nam to their diplomatic representative offices in Viet Nam (or concurrent office); (ii) In case foreign competent offices request competent offices of Viet Nam to provide information, they may send requests through their diplomatic missions in Viet Nam (or concurrent office) to Ministry of Foreign Affairs of Viet Nam which subsequently will forward those requests to Vietnamese competent agencies for consideration and execution.
- Through the central authority: Article 493 of the 2015 Criminal Procedure Code stipulates the Ministry of Public Security as the Central Authority for extradition and transfer of sentenced persons; the Supreme People's Procuracy as the Central Authority of Viet Nam for legal assistance in criminal matters. Furthermore, these authorities are also stipulated in treaties on mutual legal assistance in criminal matters, on extradition, on transfer of sentenced persons.[33] The central authorities shall take responsibility for exchanging information about the procedure to handle cases concerning mutual legal assistance in criminal matters and extradition.
- Through INTERPOL channel: the exchange of information through INTERPOL channel is executed according to the INTERPOL Constitution and provisions on the organization and tasks of the Viet Nam INTERPOL Office.

115. As mentioned in the paragraph 80, (until March, 2017) Viet Nam has not received requests for extradition or for mutual legal assistance in criminal matters concerning foreigner committing acts of torture and found in the territory of Viet Nam.

**Implementation of Article 7**

*Measures to ensure fair treatment of the alleged offender at all stages of the proceedings*

116. In accordance with the provisions of Vietnamese laws, the criminal procedure shall be conducted on the principle that all citizens are equal before law, regardless of their nationality, gender, belief, religion, social class and position (Article 5 of the 2003 Criminal Procedure Code, Article 9 of the 2015 Criminal Procedure Code). Thus, the alleged offender committing act of torture shall have rights similar to the alleged offender committing other offences.

117. To ensure legitimate rights and interests of the alleged offender at all stages of the proceedings as well as to ensure all criminal procedure activities are conducted according to legal provisions, the 2003 Criminal Procedure Code has a chapter including 30 articles which provides fundamental principles of criminal procedure.

118. The 2015 Criminal Procedure Code also has a chapter with 27 articles which provides fundamental principles of criminal procedure:

- Presumption of innocence (Art. 13): An accused person is deemed innocent until his guilt is evidenced according to the procedures and formalities as defined in this Law and a Court passes a valid judgment. If grounds for conviction, as per the procedures

[32] Data is updated to February, 2016.

[33] See further in Annex 8.

and formalities in this Law, do not suffice, competent procedural authorities and persons shall adjudge the accused person to be not guilty;

- Guarantee of right of defense for accused persons and protection of legitimate rights and interests of victims and litigants (Arts. 16, 71): an accused person is entitled to defend himself or be defended by a lawyer or another person. Competent procedural authorities and persons are responsible for informing accused persons, victims and litigants of all of their rights of defense, legitimate rights and benefits according to the Criminal Procedure Code. Competent procedural authorities and persons shall provide explanations and guarantee the implementation of all of such rights and benefits. If an accused person or a victim is entitled to legal aid under the 2006 Law on Legal Aid, competent procedural authorities and persons are responsible for elucidating their right of legal aid. If such person petitions for legal aid, competent procedural authorities and persons shall promptly inform a Governmental legal aid centers.

119. Conducting in accordance with legal provisions, Investigation Agencies of the People's Public Security Forces have received, considered to grant defense licenses in the investigation stage, specifically: the year 2012: 3.795 licenses were granted; the year 2013: 7.508 licenses were granted; the year 2014: 8.752 licenses were granted; the year 2015: 9.280 licenses were granted.

*Provisions of evidence*

120. Under the provisions of the 2003 Criminal Procedure Code, evidences are facts which are collected according to the order and procedure prescribed by this Code, used by the Investigation Agencies, procuracies and courts as grounds to determine whether or not criminal acts have been committed, persons committing such acts as well as other circumstances necessary for the proper settlement of the cases (Article 64). The 2003 Criminal Procedure Code provides in detail the sources of evidences, including: Exhibits; testimonies of witnesses, victims, civil plaintiffs, civil defendants, persons with interests and obligations related to the cases, the arrestees, persons held in temporary custody, the accused or defendants; Expertise conclusions; Minutes of investigating and adjudicating activities, and other documents and things (Art. 64). At the same time, there are specific provisions on the collection of evidences (Art. 65).

121. The 2015 Criminal Procedure Code succeeds to the provisions of the 2003 Criminal Procedure Code on evidences and supplements to the sources from which evidences are collected and determined including: Electronic data; Findings of expert valuation; Records of legal proceedings, investigation, prosecution, adjudication, sentence enforcement; Results of judicial delegation and other international co-operations. At the same time, supplementing the provision that truthful things that are not collected as per the sequence and formalities as per this Law bear no legal effect and are not evidences for the settlement of criminal cases (Art. 87). Moreover, the 2015 Criminal Procedure Code expands the subjects who can give evidences. Accordingly, other participants in legal proceedings, authorities, entities or any person can provide evidences, documents, items, electronic data and present the matters related to the case (para. 3, Art. 88).

122. In all stages of the proceedings, evidences must be evaluated to examine the legitimation and truthfulness. Therefore, the information and documents that are not collected as per the sequence and formalities as per this Law bear no legal effect and are not evidences for the settlement of criminal lawsuits. Procedure — conducting persons shall identify and evaluate all evidences with a full sense of responsibility.

123. Thus, when prosecuting criminal liability of any crimes, the collection, assessment and use of evidences in all stages of the proceedings are conducted in accordance with the provisions of the law, regardless the nature and seriousness of the crimes or offenders. If the collection, assessment and use of evidences do not meet the requirements of the Criminal Procedure Code, they will not be used in any stage of the proceedings.

**Implementation of Article 8**

*The legal basis of extradition of Viet Nam*

124. According to Resolution No. 83/2014/QH13 dated 28/11/2014 of the National Assembly on the ratification of UNCAT, Viet Nam does not consider the Convention as a direct legal basis for extradition. Extradition shall be implemented on the basis of Vietnamese laws, extradition treaties to which Viet Nam is a party or the principle of reciprocity, specifically:

- Bilateral treaties on extradition of which Viet Nam is a signatory.[34] Although not specifying torture is one of extraditable offences, pursuant to these treaties, a person executing torture acts shall violate Vietnamese criminal law and may be extradited;
- The 2003 Criminal Procedure Code (Chapter XXXVII), the 2015 Criminal Procedure Code (Part 8), the 2007 Law on Mutual Legal Assistance (Chapter IV) and Inter-Ministerial Circular No. 02/2013/TTLT-VKSNDTC-TANDTC-BCA-BTP-BNG dated 16/8/2013 of the Supreme People's Procuracy, the Supreme People's Court, Ministry of Public Security, Ministry of Justice, Ministry of Foreign Affairs provide guidance on the receipt and transfer of files and material evidences of criminal cases for requesting foreign countries to continue to examine penal liability.

125. Viet Nam does not have provisions on extraditable offences in its national law and international treaties to which Viet Nam is a party like other countries but only has provisions on extraditable cases. Accordingly, an extraditable person is a person who commits criminal acts subject to penalties of one or more years in prison, life imprisonment or death penalty under the Viet Nam Criminal Code or the criminal law of the requesting country, or one who has been sentenced to imprisonment by a court of the requesting country and his/her remaining prison term is at least six months. Consequently, if a person who executed torture acts abroad and is present in Viet Nam's territory ensures the principle of double criminality and meets the conditions of extradition, Vietnamese authorities shall receive and handle requests for his/her extradition.

126. From 2010 to 2016, Viet Nam received 18 extradition requests and sent 20 extradition requests to other countries.[35] Until now, Viet Nam has not received or executed extradition request concerning torture.

**Implementation of Article 9**

*Duty of providing mutual legal assistance in criminal matters.*

127. Viet Nam executes criminal legal assistance according to the legal basis as follows:

- Multilateral or bilateral treaties that are specialized or contain provisions on mutual legal assistance in criminal matters such as CAT (Art. 9), TOC (Art. 18);[36]
- The 2003 Criminal Procedure Code (Chapter XXXVI), the 2015 Criminal Procedure Code (Part 8), the 2007 Law on Mutual Legal Assistance (Chapter III) and Inter-Ministerial Circular No. 02/2013/TTLT-VKSNDTC-TANDTC-BCA-BTP-BNG dated 16/8/2013 guiding the receipt and transfer of files and material evidences of criminal cases for requesting foreign countries to continue to examine penal liability;
- Where the requests for mutual legal assistance in criminal matters regarding torture acts are not based on multilateral or bilateral treaties on mutual legal assistance in criminal matters, Viet Nam shall apply the principle of reciprocity to consider the execution of such requests.

128. The scope of mutual legal assistance in criminal matters: service of papers, dossiers and documents related to mutual legal assistance in criminal matters; summon of witnesses

[34] See further in Annex 8.
[35] See further in Annex 12.
[36] See further in Annex 8.

and experts; collection and supply of evidence; penal liability examination; information sharing; other requests for mutual legal assistance in criminal matters (Article 17 of the 2007 Law on Mutual Legal Assistance). Besides, some treaties on mutual legal assistance in criminal matters between Viet Nam and foreign countries have broader scope of legal assistance including: taking the testimony or statements of persons including by video-conference or television; locating or identifying persons; return of assets; sharing of assets (the Treaty between the Socialist Republic of Viet Nam and the United Kingdom of Great Britain and Northern Ireland on mutual legal assistance in criminal matters); the recovery, forfeiture or confiscation of property derived from the commission of an offence; locating and identifying witnesses and suspects (the Treaty on mutual legal assistance in criminal matters among ASEAN countries of 2004).

129. From 2011 to 2015, Viet Nam received, resolved 337 requesting records of mutual legal assistance in criminal matters from abroad; submitted 379 requesting records of mutual legal assistance in criminal matters to foreign countries. Currently, Viet Nam has not received and requested mutual legal assistance in criminal matters concerning torture offence.

**Implementation of Article 10**

*Legal provisions relating to the dissemination and popularization of legal normative documents and international treaties*

130. The general legal basis for the dissemination and popularization of legal normative documents is provided in different legal normative documents such as the 2012 Law on Legal Dissemination and Education, the 2006 Law on Information Technology.[37] Recently, the National Assembly adopted the 2016 Law on Access to Information, the 2016 Press Law, which contribute to strengthening the legal basis for the legal dissemination and popularization in general and anti-torture laws in particular.

131. To disseminate and propagate the UNCAT, Viet Nam has promulgated the Government Plan, plans of ministries and agencies; popularization plans at central and local level in various forms for cadres, civil servants and public employees[38]..., requiring that the dissemination, popularization and implementation of laws related to the prevention and combat against torture and the UNCAT be conducted in a frequent and consecutive manner and associated with the effective implementation of criminal procedure law.

*Basic information on training programs against torture*

132. Relevant ministries and agencies have organized training and communication programs for law enforcement and judicial officers, health workers and other personnel on the content of the 2013 Constitution, the Criminal Code, the Criminal Procedure Code, Law on Execution of Criminal Judgments, Law on Execution of Temporary Custody and Detention and international treaties on human rights to which Viet Nam is a party. Legal provisions on human rights respect and protection are integrated into these training programs including the right not to be subjected to torture. In addition, each ministry and agency, based on its function and duties, has organized workshops, conferences and trainings for their employees on matters related to human rights and opposing all forms of torture,[39] specifically:

133. The Supreme People's Court organized seminars for judges, court cadres on the application of criminal law, criminal procedure law, where provisions of the UNCAT were incorporated into the seminar agenda.

134. The Supreme People's Procuracy organized video conferences to provide intensive training on new laws relating to the operation of the Investigation Agency of the Supreme People's Procuracy, including training on criminal investigation methods for fatal cases due to being applied corporal punishment or obtained testimony by duress.

[37] See further in Annex 4.
[38] See further in Annex 13.
[39] See further in Annex 2.

135. Ministry of Public Security organized seminars, conferences, training courses and training materials related to the UNCAT conducted by for its cadres and security officers, including:

- Intensive Training Conference on the content of the UNCAT and Viet Nam's relevant laws for the People's Public Security Forces (800 cadres and security officers working in the areas of investigation, temporary custody or detention, execution of criminal judgments, judicial assistance and public security force at commune level. Based on that, public security units at local level organized training workshops on the UNCAT in their respective localities such as in Hai Noi, Da Nang, Can Tho and other provinces;
- Conference on the dissemination and popularization of the basic content of laws adopted by the thirteenth National Assembly at its 10th Session directly related to human rights, the right not to be subjected to torture, applying corporal punishment, obtaining testimony by duress;
- Specialized training courses on care, treatment and management of prisoners for officers and soldiers of the criminal police force, drug prevention and combat police, health workers, probation officers, education officers in detention centers and prisons across the country ... From January, 2011 to December, 2015, Ministry of Public Security organized 113 training courses for nearly 6,000 officers and cadres, including training on interventions and harm reduction for HIV prevention and combating HIV/AIDS-related stigma and discrimination.

136. Ministry of Defence: Every year, the judicial authorities in the Army organize training courses against torture under the provisions of the UNCAT and Vietnamese laws for cadres and soldiers of the Viet Nam People's Army, especially for procedure-conducting officers, cadres and soldiers working on the incarceration. The Ministry of Defense also issued the implementation plan of the UNCAT in the Army and the Project on popularization and dissemination of UNCAT and Vietnamese law against torture. On that basis, agencies and units under the Ministry of Defense, especially judicial authorities in the Army and Border Guard forces establish the implementation plan of UNCAT in accordance with the function, tasks and practical conditions of each agency or unit.

137. Ministry of Justice developed the Project on the UNCAT popularization and dissemination for cadres, civil servants, public employees and the people. Every year, as part of its work to guide the implementation of legal dissemination and education across the country, the Ministry of Justice always emphasizes the content of human rights, including the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment. In 2015, the Ministry of Justice organized the training courses for staff in charge of the legal dissemination and education related to human rights in general and the right not to be subjected to torture in particular.

138. Ministry of Health, during the process of development, consultation, issuance and implementation of legal normative documents on health, has always focused on raising the quality of healthcare and medical conditions to serve patients, non-discrimination to patients given their legal status but relying on health ethics, methods and regulations. In the instruction, administration and organization of the dissemination and education of law in general and medical law in particular, units under the Ministry of Health always refer to human rights, the rights of patients and professional responsibility, ethics of officials and medical staff in the provision of health services, including the ban on inhuman and degrading treatment.

139. Ministry of Information and Communication in collaboration with other agencies held seminars, training courses on human rights and conventions on human rights such as the Media Conference on human rights, Workshop on improving the effectiveness of popularising information and communication on Viet Nam's achievements in human rights protection; disseminated information on workshops and conferences on the UNCAT organized by other ministries and agencies such as Ministry of Foreign Affairs (2014), Ministry of Public Security (2016); compiled materials and organized training on human rights issues with 2 courses per year on average and about 100 students per course.

140. Training institutions: At present, a number of training institutions in Viet Nam offer Master Degree training programs on human rights such as the School of Law of Viet Nam National University, Ha Noi; Ho Chi Minh National Academy of Politics ... At university and college levels, many law training schools like the Hanoi Procuracy University, Hanoi Law University ..., especially academies, schools under the People's Public Security, the People's Army have integrated the content of human rights protection in general and against torture, applying corporal punishment and obtaining testimony by duress in particular into teaching programs for students.[40] In addition, the academies and schools of the People's Public Security and training centers, classes on investigation skills have plan to develop the Project on teaching knowledge and legislation against torture for students and trainees.

*Training programs aimed at ensuring the appropriate treatment and respect for women, minors and ethnic minority or religious groups or other groups.*

141. Vietnamese law always acknowledges and ensures the appropriate treatment and respect for women, minors, ethnic minorities, as stipulated in fundamental laws such as the Constitution (Articles 5, 26, 36, 37, 58); Criminal Code (Articles 46, 48 of the 1999 Criminal Code (amended in 2009), Article 51, 52 of the 2015 Criminal Code; the Criminal Procedure Code (Articles 10, 63 of the 2003 Criminal Procedure Code; articles 15, 19, 26, 243, 360 of the 2015 Criminal Procedure Code); Law on Execution of Criminal Judgments (Articles 4, 27, 29, 38, 43, 45, 111; Section 3), Law on Execution of Temporary Custody and Detention (Articles 4, 18, 23, 28; Chapter V) ... To protect the rights of these groups not to be affected by forms of torture, ministries and agencies concerned organized numerous and diverse training programs for cadres and soldiers on the appropriate treatment and respect to these groups. Specifically:

142. The Supreme People's Court implemented the technical cooperation program on human rights between Viet Nam and Australia in the period from 2005 to 2015, including cooperation with the Australian Human Rights Commission to study the experience of Australia in the field of human rights protection. The main activities were carried out under the model of study tours to learn the experience of other countries and disseminating it to judges and court cadres at seminars organized in Viet Nam.

143. The Ministry of Public Security organized numerous training programs, seminars and conferences to propagate the Constitution, Criminal Code, Criminal Procedure Code, Law on Execution of Criminal Judgments, the 2015 Law on Execution of Temporary Custody and Detention among the People's Public Security forces for hundreds of cadres and soldiers working in the fields of investigation, temporary custody or detention, execution of criminal judgments, judicial assistance as well as the Public Security forces at commune level, where training on the treatment to these groups of people at all stages related to police work was incorporated. The conferences required cadres and soldiers to apply every lawful measure to determine the facts of criminal cases in an objective and comprehensive manner, make clear evidences of crime and evidences of innocence, circumstances aggravating and extenuating the criminal liabilities of the accused or defendants who are women, minors, elders and to take the appropriate treatment and to respect women, minors, elders in accordance with the provisions of the law, such as requesting for translator in cases where the person participated in procedures could not use Vietnamese or documents are not in Vietnamese; holding female prisoners separately; female prisoners and minor prisoners shall be assigned work suitable to their gender, health and age and free from heavy and hazardous work.

144. Ministry of Agriculture and Rural Development, in the process of building or enacting legal normative documents, always guaranteed equality and respect for women, minor and minority, religious groups or other vulnerable groups in society in accordance with the law; issued provisions applied to these groups in the manner which they can enjoy better treatment, lower eligibility requirements and better rights as well as be subject to lighter sanctions than others. In addition, programs and projects such as the Project on law popularization and dissemination for farmers and ethnic minorities, the Action Plan on

[40] See further in Annex 3.

Gender, the popularization programs for fishermen all emphasized this principle during the implementation process.

*Information about popularization activities of the UNCAT conducted in practice.*

145. Until now, 58 ministries, agencies and units have issued popularization plans of the UNCAT; almost all the relevant ministries, agencies and units have held training conferences on the content of the UNCAT or integrated it in the agenda of other training conferences on other relevant legal documents.[41]

**Implementation of Article 11**

*The system of rules, directives, methods and practices as well as the arrangement of detention and treatment of persons arrested or held in temporary custody or detention or imprisoned.*

146. The Constitution 2013 provides for the most fundamental principles in order to ensure human rights, including the process of investigation, interview for obtaining testimony and temporary detention or custody (Arts. 14, 16, 19 and 20).

147. The 1999 Criminal Code (amended in 2009) and the 2015 Criminal Code stipulate that every crime committed by a person must be discovered promptly and dealt with quickly and fairly in compliance with the law; all criminals are equal before the law regardless of gender, ethnicity, belief, religion, social class, or social status; a person who commits a less serious crime for the first time may serve a lighter sentence than imprisonment and be put under mandatory supervision by his/her family or an organization; a person sentenced to imprisonment shall serve his/her sentence at prisons and must improve himself/herself to become a helpful national; commutation or conditional parole will be granted to the sentenced persons if they satisfy conditions set out in the Criminal Code .... (Art. 3).

148. The 2003 Criminal Procedure Code provides that:

- The principles of criminal procedure include respect for and defense of fundamental rights of nationals (Art. 4), guarantee of nationals' right to body inviolability (Art. 6), protection of life, health, honor, dignity and property of nationals (Art. 7), responsibilities of procedure-conducting agencies and persons (Art. 12);
- Vietnamese law clearly defines what the investigators must do and must not do before the interview, during the interview and after the interview of the accused (Arts. 131 and 132) such as clearly explaining to the accused about their rights and obligations; making a minute for each time of interview for obtaining testimony which must contain all statements of the accused, questions and answers.

149. The 2015 Criminal Procedure Code expands the scope of people who are protected and guaranteed to be free from torture and inhuman treatment in comparison with the 2003 Criminal Procedure Code. Accordingly, people who are protected are not only nationals but every individual as defined in Article 8 on respect and protection of human rights and individual's legitimate rights and interests, Article 10 on guarantee of the right to body inviolability, Article 11 on protection of individuals' life, health, honor, dignity and belongings and juridical persons' reputation and property. The principles, orders and procedures for interview for obtaining testimony of the accused in the 2015 Criminal Procedure Code (Arts. 183 and 184) succeed to the provisions of the 2003 Criminal Procedure Code, but add a number of provisions to minimize behaviors of applying corporal punishment, obtaining the testimony by duress, particularly regulations on recording by sound or sound-and-visual means during the interview for obtaining testimony of the accused.

150. The 2015 Law on Organization of Criminal Investigation Agencies prohibits five groups of acts, including four groups of acts related to protecting the rights of arrestees, the persons held in temporary custody, the accused (Art. 14), specifically:

[41] See further in Annex 13.

- It is strictly forbidden to falsify the case files; conduct criminal liability examination against persons who do not commit criminal acts; fail to conduct penal liability examination against persons who commit criminal acts which are subject to criminal liability examination; issue decisions in contravention of law; force other persons to act against the law; to disclose case investigation secrets; illegally intervene into the criminal investigation;

- It is strictly forbidden to obtain the testimony by duress, apply corporal punishment and forms of torture and other cruel, inhuman or degrading treatment or punishment or any acts infringing upon the legitimate rights and interests of agencies, organizations and individuals;

- It is strictly forbidden to prevent arrestees, persons held in temporary custody or the accused from exercising their rights to self-defense, asking lawyers or other persons to defend them or render legal aids; from filing complaints or denunciations; or from receiving compensations for material and spiritual damage or getting honor rehabilitation;

- It is strictly forbidden to prevent defense counsels or legal aid providers from making the defense or providing legal aids in accordance with the law.

151. The 2012 Law on Handling Administrative Violations provides for temporary custody of involved persons according to administrative procedure (Art. 122). Agencies with the function of preventing law violations which must regularly keep persons committed administrative violations in temporary custody facilities need to arrange, design and build the administrative custody houses or private rooms that must have separate custody places for minors, woman or foreigners and must have specialized officers for management and protection work. It is strictly prohibited to hold persons committed administrative violations in criminal custody rooms, detaining rooms or places that do not ensure hygiene, safety for persons subject to custody.

152. The 2010 Law on Execution of Criminal Judgments provides the following:

- Eight principles of execution of criminal judgments (Article 4) such as respect for the dignity and legitimate rights and interests of sentenced persons; execution of judgments towards minor offenders mainly aims to educate and help them correct their wrongful acts, healthily develop and become useful to the society; combination of punishment and education and reform in the execution of judgments; application of educational and reform measures must be based on the nature and seriousness of crimes committed, age, gender, educational level and other personal characteristics of sentenced persons;

- Ten types of prohibited acts in execution of criminal judgments (Art. 9) are divided into two groups: the first group includes the strictly prohibited acts for the sentenced persons and those involved; the second group includes the strictly prohibited acts for competent persons in the execution of criminal judgments;

- A prison shall organize inmate incarceration as follows: prison sectors for inmates serving sentences of over 15 years' imprisonment or life imprisonment and inmates committing dangerous recidivism; prison sectors for incarcerating inmates serving sentences of 15 years or less in prison, inmates serving sentences of over 15 years' imprisonment which have been reduced to under 15 years for good rehabilitation records (para. 1, Art. 27). The following inmates shall be held separately: female inmates; minor inmates; foreign inmates; inmates with extremely dangerous infectious diseases; inmates showing signs of suffering a mental disease or another disease that deprives them of perception or act control capacity pending a court decision; inmates who repeatedly violate detention regulations (para. 2, Art. 27). In a detention center, female inmates, inmates who repeatedly violate detention regulations shall be separately held (para. 3, Art. 27);

- Regimens of food, accommodation, clothing, personal articles, medical care, and physical exercise, sports and cultural and art activities of inmates are clearly defined to ensure basic standards (Section 2, Chapter III). The provisions on the regimes for minor inmates are specified in Section 3 of Chapter III.

153. The 2015 Law on Execution of Temporary Custody and Detention provides for:

- Five principles of management and execution of temporary custody or detention to ensure compliance with the law, the humanity policy of Vietnamese State (Art. 4); seven groups of prohibited acts in temporary custody or detention (Art. 8); ten groups of rights and two groups of obligations of persons held in temporary custody or detention (Art. 9); control and supervision of management and execution of temporary custody or detention (Art. 6); supervision of execution of temporary custody or detention (Art. 7). Moreover, detention centers and custody houses also strengthen measures to sensitize, educate and punish severely any violation of cell rules, proactively detect, prevent and eliminate infringement upon the lives, health and dignity of persons held in temporary custody, detention. The temporary custody, detention are classified in accordance with legal provisions;[42]
- Regimes of the persons held in temporary detention or custody are stipulated in Chapter IV.[43]

154. Decree No. 89/1998/ND-CP dated 7th November, 1998 of the Government issuing regulations on temporary detention and custody (Chapter 4), Decree No. 98/2002/ND-CP dated 27th November, 2002 of the Government amending and supplementing some articles of the Regulation on the temporary custody and detention issued together with Decree No. 89/1998/ND-CP dated 7th November, 1998 and Decree No. 09/2011/ND-CP dated 25th November, 2011 of the Government amending and supplementing the regimes of food and medical care for persons held in temporary custody, detention provided in Article 26 and Article 28 of the Regulation on Temporary Custody, Detention have detail provisions of the regimes of persons held in temporary custody, detention.[44]

155. Decree No. 117/2011/ND-CP dated 15th December, 2011 of the Government providing for the organization and management of inmates and regimes of food, clothing, accommodation, daily living, medical care for inmates (Chapter 3) and Decree No. 90/2015/ND-CP dated 13th October, 2015 of the Government amending and supplementing some articles of Decree No. 117/2001/ND-CP dated 15th December, 2011 of the Government providing for the organization and management of inmates and regimes of meal, clothing, accommodation, daily living, medical care for inmates.

156. Decree No. 112/2013/ND-CP on sanction forms of expulsion, measures of human custody, escorting violators under administrative procedures and management of foreigners violating Viet Nam's law during the process of deportation, including provisions on the jurisdiction and procedures of detention of persons under administrative procedures and management of persons in custody according to administrative procedures (section 1, chapter 3).

157. Circular No. 46/2011/TT-BCA on 30th June, 2011 of the Ministry of Public Security providing for inmates meeting with relatives; receiving and sending letters, receiving cash and articles and telephone conversations with relatives and Joint Circular No. 12/2013/TTLY-BCA-BQP-BTC dated 2nd December, 2013 guiding the labour regime and the use of results of labour, vocational training of inmates in prisons.

158. The regimes for inmates and persons held in temporary custody, detention are defined as follows:

- Regimes for prisoners:
    - Regimens of food, accommodation, clothing, personal articles: 17kg of rice; 0.7 kg of meat, 0.8 kg of fish; 0.5 kg of sugar; 01 kg of salt; 15 kg of vegetables; 0.75 litters of fish sauce ... The minimum sleeping space for each inmate is two square meters (2m2) with ceramic tile pedestal, floorboard or bed ... Every year, inmates are issued two sets of long clothes in the standard form, two sets of underwear, two towels, two mats, two pairs of sandals ...;

[42] See further in paras. 57, 58.
[43] See further in para. 58.
[44] See further in para. 58.

- Regimen of medical care: regimes of food, medicine and health restoration shall be prescribed on the basis of the kind of disease and disease severity. Daily conventional medicine money for inmates is granted equal to 02 kg of rice/01 person/01 months ...;
- Regimen of labour: labour shall be organized for inmates to suit their age, health; they shall work and learn for 8 hours at most per day and are entitled to days off on Saturdays, Sundays and public holidays as prescribed by law ...;
- Regimen of physical exercise, sports and cultural and art activities of inmates: each prison department has a library, playing and sports grounds and equipped with a public-address system and each communal prison cell be equipped with a color television set ...;
- Regimen of meetings with relatives, receipt of presents and correspondence: inmates may meet their relatives once a month for no more than one hour, or three hours in special cases. Inmates who properly observe prison regulations or record merits may meet their spouses in a private-room for not more than 24 hours ...;
- Other regimens: criminally sentenced persons and other related agencies, organizations and individuals may lodge complaints about decisions or acts of agencies and persons competent to execute criminal judgments if they have grounds to believe that these decisions or acts are unlawful and infringe upon their lawful rights and interests (para. 1, Art. 150). The complainant has his/her infringed lawful rights and interests restored and receive compensations for damage in accordance with law (point e, para. 1, Art. 154); has right to request a competent agency for protection against intimidation or revenge (points b, d, para. 1, Art. 166) ... For gays, bisexuals, transgender persons, Viet Nam's law has no provisions on the detention and custody separately;
- Regimens of food, clothing, daily living and medical care for foreign inmates: foreign inmates shall be held separately in prisons. Regimes of food, clothing, accommodation, daily living and medical care for foreign inmates shall be the same as Vietnamese inmates, except where international treaties to which Viet Nam is a member contain different provisions.

- Regimens for persons held in temporary custody, detention:
  - Regimens of food, accommodation and personal articles: 17kg of rice; 0.7 kg of meat, 0.8 kg of fish; 01 kg of salt; 0.5 kg of sugar; 0.75 litters of fish sauce; 0,1 kg of monosodium glutamate; 15 kg of vegetables and 15 kg of firewood or 17 kg of coal ... The average minimum sleeping space for each person held in temporary custody, detention is 2 square meters (2m2) with platforms made of cement or ceramic tiles and mats to lie ... The persons held in temporary custody, detention are used clothes, blankets, mats, mosquito nets. In case there are not enough these articles, the custody houses and detention centers shall lend them under the standards of per person, including: 01 mat, 01 mosquito net (personal type), 01 blanket, 01 pair of sandal and two long suits ...;
  - Regimen of daily living: an average of 20 persons held in temporary custody, detention is granted for 01 Nhan Dan newspaper or local newspaper. Foreigners detained, held in the custody houses and detention centers receive books and newspapers in their languages to which they have the nationality when the competent procedure-conducting agencies, which are handling the cases permit.

- Regimens for persons held in temporary detention according to administrative procedures:
    - Regimens of food for persons held in temporary detention: in cases persons held in temporary detention or their families cannot be guaranteed for themselves, the agencies, units of competent persons giving temporary detention decisions are responsible for ensuring the regimes of diet for them under the quotas for per person in one day, namely: 0.6 kg of rice, 0.1 kg of regular pork, 0.5 kg of vegetables, 01 litters of drinking water boiled, fish sauce, salt, fuel suitable ... The agencies in charge of detention may decide to swap quantitative ration in line with reality and the taste of persons held in temporary detention to ensure that they eat in line with the standard;
    - Other regimens: the persons held in temporary detention who are sick, are treated on the spot; in cases of serious illness or emergency, the agencies in charge of temporary detention are responsible for bringing them to health facilities and immediately notify their families, relatives to know to care; in cases their families request for taking them to home to take care of and deems it unnecessary to continue the temporary detention, the detention competent persons may decide to terminate the temporary detention ahead of time limit and permit them to their homes to heal; in case persons held in temporary detention have no fixed residence or their family and relatives are not near so that they could not come to take care for, the agencies or units in charge of temporary detention are directly responsible for the care of them ....

*Preliminary evaluation of the level of compliance with the standards of the United Nations*

159. Vietnamese legal provisions on temporary custody and detention, management and execution of criminal judgments are compatible with United Nations Standard Minimum Rules for the Treatment of Prisoners (1955); Body of Principles for the protection of All persons under Any Form of Detention or Imprisonment (1988); Code of Conduct for Law Enforcement Officials (1979); United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

*Introducing regulations on professional and ethical rules of relevant ministries*

160. In Viet Nam, there are general normative provisions for orientation of ethics, ethics training for cadres, civil servants and public employees, operation officers and non-commissioned officers, career military personnel ... who are assigned to perform the State's rights or perform their duties related to the implementation of the rights of the State. These regulations are stipulated in the 2008 Law on Cadres and Civil Servants (Articles 15, 16, 17, 18, 19, 20); the 2010 Law on Public Employees (Articles 16, 17, 18, 19); the 2014 Law on the People's Public Security Forces (Articles 30, 31); the 1999 Law on Viet Nam People's Army Officers (amended and supplemented some articles in 2008 and 2014) (Articles 4, 12); the 2014 Law on Organisation of People's Courts (Articles 67, 76, 77, 85, 89, 92, 93); the 2014 Law on Organisation of People's Procuracies (Articles 59, 73, 75, 83, 84, 85, 89, 90), Decree No. 56/2015/ND-CP on the assessment and classification of cadres, civil servants and public employees (para. 2, Art. 3; point a of para. 1, point a of para. 2 and para. 3, Art. 4).[45] Specifically, some services have direct responsibility in the implementation of the UNCAT as follows:

161. *Court*

- The 2014 Law on Organisation of People's Courts stipulates as follows:
    - Judges shall conduct trials independently and obey only the law (Art. 9). Judges must have good ethical qualities, firm political stance, courage and resolve to safeguard justice, and is incorrupt and honest; possess a bachelor or higher degree in law; have been professionally trained in adjudication (Art. 67); be independent, impartial and objective, and safeguard justice in

[45] See further in Annex 9.

adjudication; be held responsible before law for the performance of their duties, exercise of their powers and for their decisions ... (Art. 76);

- Assessors must have good ethical qualities, firm political stance, reputation in the population community, courage and resolve to safeguard justice, and is incorrupt and honest; have legal knowledge; be socially knowledgeable (Art. 85). Assessors must be independent, impartial and objective in adjudication, and contribute to safeguarding justice, human rights, nationals' rights, the socialist regime, interests of the State, and legitimate rights and interests of organizations and individuals (Art. 89);
- Court clerks shall be held responsible before law and answerable to the chief justice of their court for the performance of their duties and exercise of their powers (Art. 92);
- Examiners shall be held responsible before law and answerable to their chief justice for the performance of their duties and exercise of their powers. If committing illegal acts, they shall be disciplined, dismissed or examined for penal liability in accordance with law depending on the nature and seriousness of their violations (Art. 93).

162. *Procuracy*

- Cadres, civil servants, public employees and other employees of People's Procuracies must perform respect, and submit to supervision by the people; strictly observe the Constitution, law and regulations of People's Procuracies; to participate in law dissemination and education (Art. 59, the 2014 Law on Organisation of People's Procuracies).
- Procurators must have good ethical qualities, be incorrupt and honest, have firm political stance; possess a bachelor or higher degree in law; have been professionally trained in prosecution; are strictly prohibited from providing consultancy to persons who are arrested, held in custody or temporary detention, involved parties or other procedure participants, making the settlement of cases or matter unlawful; absolute loyalty to the motherland, devoted to serving the people; struggle for all crimes and offences; resolutely defending the Constitution, law, social justice and justice; Justification, integrity, objectivity, prudence, modesty (Articles 75, 84, 85 of the 2014 Law on Organisation of the People's Procuracies) ...
- Examiners must have good ethical qualities, be incorrupt and honest before law and answerable to procurators and chief procurators of their People's Procuracies for the performance of their duties and exercise of their powers. (Article 2, Resolution No. 924/2015/UBTVQH13 dated 13/05/2015).

163. *Public Security*

- The 2014 Law on People's Public Security Forces stipulates that the People's Public Security officers, non-commissioned officers and soldiers must be honest, brave, vigilant and ready to fight; respect and protect the lawful rights and interests of agencies, organizations and individuals ... (Art. 30); are strictly prohibited from abusing positions and delegated powers to infringe upon the interests of the State, the lawful rights and interests of agencies, organizations and individuals (Art. 31). People's Public Security officers, non-commissioned officers and soldiers and Public Security workers who breach discipline or violate law, shall, depending on the nature and severity of their violations, be disciplined, administratively sanctioned or examined for penal liability; if causing damage to the health or lives of other persons, the property or lawful interests of agencies, organizations or individuals, they shall pay compensations therefor in accordance with law (Art. 42).
- Investigators[46] must have good virtues, and be non-corrupted and honest (Article 30 of Ordinance on Organization of Criminal Investigations 2004; Article 46 of the

[46] Including the investigators of Public Security Forces, the People's Army and the Supreme People's Procuracy.

2015 Law on Organisation of Criminal Investigation Agencies); are strictly prohibited from applying corporal punishment, obtaining the testimony by duress under any form (point e, para. 2, Article 31 of Circular No. 28/2014/TT-BCA of the Ministry of Public Security of 2014 providing in details of the criminal investigation in the People's Public Security).

- The 2010 Law on Execution of Criminal Judgments prohibits giving, taking, brokering bribes or causing harassment in the execution of criminal judgments; abusing positions and powers to request exemption from or reduction of the duration, postponement or suspension of the serving of a sentence for ineligible persons... (Art. 9).

164. *Army*

- General criteria for officers are specified in Article 12 of the 1999 Law on Viet Nam People's Army Officers, amended and supplemented in 2008 and 2014; general criteria for investigators of the Army are specified in Article 30 of the 2004 Ordinance on Organisation of Criminal Investigation, the 2015 Article 46 of the Law on Organisation of Criminal Investigation Agencies; general criteria for procurators of the Army are stipulated in Article 75 of the 2014 Law on Organisation of People's Procuracies; Judge criteria of the Army are stipulated in Article 67 of the 2014 Law on Organisation of People's Courts ... Officers, cadres, soldiers and doctors who do their duties in these agencies must comply with ethical and professional rules of cadres, civil servants and public employees in general.

165. *Health*

- The medical students, health cadres in Viet Nam must:
  - Obey the principles for medical practice such as: ensuring equality, fairness and non-discrimination for patients; respecting patients' rights; be strictly prohibited infringing upon patients' rights; failing to observe professional and technical regulations in medical examination and treatment; taking advantage of positions and powers in medical examination and treatment; abusing the profession to harm the honor, dignity and body of patients... (Articles 3 and 6 of the 2009 Law on Medical Examination and Treatment);
  - Comply with regulations on the conduct of medical civil servants and public employees when they do their duties and assigned tasks; the conduct of medical civil servants and public employees to colleagues; the conduct of medical civil servants and public employees to agencies, organizations and individuals; the conduct of medical civil servants and public employees in the medical and treatment facilities (Articles 3, 4, 5 and 6 of Circular No. 07/2014/TT-BYT dated 25th February, 2014 of the Ministry of Health);
  - Comply with regulations on medical practice ethics such as respecting for the law and the strict implementation of professional regulations; respecting for the right to medical examination and treatment of the people; non-discrimination against patients; not allocating sub-standard drugs, drugs not in accordance with the requirements and the level of disease to the patients for personal benefit ... (Articles 2, 3, 5 and 11 of Decision No. 2088/QD-BYT dated 6th November, 1996 of the Minister of Health on the issuance of regulations on medical ethics).

166. *Forest Protection Service*

- When forest protection personnel do their duties, they have to abide by the general provisions of the law on cadres and civil servants and the rules relating to the protection and development of forests. Forest protection personnel who fail to fully discharge their duties and powers, have to bear responsibility in accordance with law (para. 2, Art. 12 of Decree No. 119/2006/ND-CP dated 16th October, 2006 on the organization and operation of the Forest Protection Service).

167. *Fishery Surveillance Force*

- When civil servants and public employees of the Fishery Surveillance Force do their duties, they have to abide by the general provisions of the law on cadres and civil servants and the rules relating to the protection of fisheries resources, natural resources and marine environment. The powers and responsibilities of the members of the fishery control force are clearly stipulated in Article 8, Chapter III of Decree No. 102/2012/ND-CP dated 29th November, 2012 on the organization and operation of the Fishery Surveillance Force.

168. *Customs*

- Customs officials are strictly prohibited from: "causing troubles and difficulties when following customs formalities; screening or colluding with others in smuggling or illegally transporting goods across the border, committing trade or tax fraud; taking bribes, appropriating or embezzling temporarily seized goods or other acts for self-seeking purposes; other violations against the Law on customs" (para. 1, Article 10 of the 2014 Law on Customs).

*Rules to ensure lawyers, doctors, family members quickly notified, informed, approached and consulted in the case of foreign nationals.*

169. Viet Nam's law provides on informing family members of holding persons in emergency situation, arresting under the Criminal Procedure Code.[47] Regulations on appointing defense counsels, seeking defense counsels are also regulated in the Criminal Procedure Code as follows:

- The 2003 Criminal Procedure Code provides on the defense counsel in Articles 56, 57, 58. Accordingly, the defense counsel may be: a lawyer; legal representatives of persons held in temporary custody, the accused, defendant; the People's advocates. The 2015 Criminal Procedure Code has added the provisions of defense counsel that defense counsels are enabled by persons facing charges or appointed by competent procedural authorities to perform activities of pleading, the registration of which has been approved by competent procedural authorities and persons. The subject, who can be a defense counsel, is also extended to, including legal assistants for charged persons given legal aid. The concept and standard of legal assistant is defined in Article 3 and Article 21 of the 2006 Law on Legal Aid. The 2015 Criminal Procedure Code also adds one provision on the standards of the People's advocates (Art. 72).

- In order to ensure the human rights, Viet Nam's law provides that defense counsels shall be selected by persons held in temporary custody, the accused, defendants or their lawful representatives (Article 57 of the 2003 Criminal Procedure Code; Articles 75 and 76 of the 2015 Criminal Procedure Code); interpreters shall be required by competent authorities in cases where participants in legal proceedings do not speak Vietnamese (Article 61 of the 2003 the Criminal Procedure Code). The 2015 Criminal Procedure Code expands the case of appointment of defense counsel in comparison with the 2003 Criminal Procedure Code. Accordingly, if suspects or defendants facing charges that may lead to the harshest sentence of 20 years in prison, life imprisonment or death penalty as per the Criminal Code do not seek defense counsels, competent procedural authorities shall appoint defense counsels for them (Art. 76); the case of demanding interpreters and translators whose services are demanded by competent procedural authorities when participants in legal proceedings do not speak Vietnamese or documents are made in foreign languages (Art. 70).

- Viet Nam's law clearly stipulates the rights of the defense counsels as follows:

    - Defense counsels shall participate in the procedure from the initiation of criminal proceedings against the accused. In case of arresting persons in urgent cases, arresting offenders red-handed or wanted offenders, defense

[47] See further in paras. 53, 54, 112, 113, 114.

counsels shall participate in the procedure from the time the custody decisions are issued (paragraph 1, Article 58 of the 2003 Criminal Procedure Code). The 2015 Criminal Procedure Code adds the provision that defense counsels for arrestees and temporary detainees engage in legal proceedings upon the arrestees' appearance in an office of investigation authorities or units assigned to carry out certain activities of investigation or upon the release of a decision on temporary detainment (Art. 74);

- Defense counsels enjoy 10 groups of rights such as being present when testimonies are taken from the persons held in temporary custody, when the accused are interviewed; reading the minutes of the proceedings in which they have participated, and procedural decisions related to the persons whom they defend; meeting the persons held in temporary custody; meeting the accused or defendants being under temporary detention; complaining about procedural decisions and acts of the agencies and persons with procedure-conducting competence... (paragraph 2, Article 58 of the 2003 Criminal Procedure Code). In the 2015 Criminal Procedure Code, the rights of defense counsels are provided more detail than those in the 2003 Criminal Procedure Code and expanded to 14 groups of rights such as engaging in the activities of confrontation, identification, recognition of voice and other investigative activities; requesting competent procedural authorities to collect evidences, add or repeat expert examinations or revaluate property ... (paragraph 1, Art. 73).

170. Regulations on medical examination and treatment:

- Detention centers can establish clinics for medical examination and treatment for the persons held in temporary custody detention; detention centers under jurisdiction of Hanoi and Ho Chi Minh City Public Security can establish hospitals for medical examination and treatment for the persons held in temporary detention custody in the detention centers as stipulated by the Ministry of Public Security and the Ministry of Health (Article 14 of Decree No. 89/1998/ND-CP dated 7th November, 1998 issuing the Regulations on temporary custody and detention). Where the persons held in temporary custody or detention are ill, or bear serious injuries beyond the examination and treatment capacity of medical personnel of custody houses or detention centers, the heads of custody houses or detention centers shall inform the authorities which are handling the case, and conduct the procedures for transferring them to outside healthcare facilities for treatment and ensure their continued detention. Medical care costs is paid by custody houses or detention centers to the healthcare facilities (para. 2, Article 1 of the Government's Decree No. 09/2011/ND-CP dated 25th January, 2011 amending and supplementing the regimes of food and medical examination and treatment for persons held in temporary custody or detention provided for in Articles 26 and 28 of the Regulation on temporary custody and detention);

- The 2015 Law on Execution of Temporary Custody and Detention provides that the persons held in temporary custody, detention shall be entitled to the benefits of medical check-up, treatment and disease prevention. In case of sickness and injury, they shall be examined and treated at the medical facility of the custody houses and shall be transferred to the district or provincial medical facility, military hospital or central hospital for examination or treatment in case of serious illnesses or injury exceeding the ability of the custody facility. The custody facility must inform the relatives or legal representative of such persons for coordinated care and treatment (Art. 30).

171. Provisions on consular notification are fully detailed in Viet Nam's law.[48]

172. Thus, the current regulations of Viet Nam are basically compatible with the standards of the United Nations in this field.

[48] See further in paras. 112, 113, 114.

*Independent agencies or mechanisms established to examine, monitor prisons and detention and custody facilities*

173. The National Assembly, National Assembly deputies: the 2015 Law on supervisory activities of the National Assembly and People's Councils provides that the National Assembly has jurisdiction to review the report of the Government on the situation of implementation of the Constitution, laws and resolutions of the National Assembly and to establish provisional Commission(s) to investigate a particular issue and examine the Commission's investigation report. The National Assembly deputies have the jurisdiction to supervise the enforcement of laws at local level.

174. The People's Procuracies: Article 4 of the 2014 Law on Organisation of People's Procuracies provides that the People's Procuracies shall supervise the lawfulness of acts and decisions committed or made by agencies, organisations and individuals in judicial activities. The supervision of judicial activities shall be conducted right upon the receipt and settlement of reports and information on crimes and recommendations for prosecution and throughout the course of settlement of the criminal cases, administrative cases in order to ensure the receipt and settlement of reports and information on crimes and recommendations for prosecution; the settlement of criminal and administrative cases; settlement of complaints and denunciations about judicial activities; other judicial activities shall be conducted in accordance with the law; the arrest, temporary custody or detention, execution of imprisonment sentences, and regimes of custody or temporary detention, management and education of persons serving imprisonment sentences must comply with law; human rights and other lawful rights and interests of persons arrested or held in temporary custody or detention and persons serving imprisonment sentences without any restriction by law must be respected and protected.

175. The Government Inspectorate, Inspectorates of ministries, services having custody and detention facilities: the 2010 Law on Inspection stipulates that the Government Inspectorate has the missions and powers to inspect the implementation of policies and laws, the performance of task and exercise of powers by ministries, government-attached agencies and provincial-level People's Committees. Ministerial inspectorates have the missions and powers to inspect the observance of policies and laws, performance of tasks and exercise of powers by agencies, organisations and individuals under their ministries' direct management.

176. The Vietnamese Fatherland Front and its member organisations: the People's Inspectorate Boards are established at commune, ward and township level and are directed in terms of operation and guided in terms of organisation by the Vietnamese Fatherland Front committees at the corresponding levels. The People's Inspectorate Board is responsible for overseeing the implementation of policies and laws, the settlement of complaints and denunciations, the implementation of the law on grassroots democracy by the competent agencies, organisations and individuals in communes, wards and towns, state agencies, public non-business services providing units, state-owned enterprises.

177. Regulations of international inspection or inspection by non-governmental organisations (NGOs) of prisons: Viet Nam's law does not have specific regulations on this aspect; however, Viet Nam allows consular access and also has allowed several foreign delegations to visit prisons in the framework of experience exchange or management capacity building. Article 4 of the Optional Protocol to the CAT requires Member States to allow the Subcommittee Against Torture to visit anywhere in national territory reported about torture, including at custody houses and detention centers or prisons. Currently, Viet Nam has not ratified the Optional Protocol to the UNCAT so that Viet Nam is not bound by the Optional Protocol.

*Regulations and real conditions of the detention and custody facilities and prisons*

178. At present, Viet Nam has 53 prisons, 82 detention centers, 734 custody houses and 224 custody rooms at the border guard stations. All these facilities comply with regulations on the standards of prisons, detention centers, and custody houses.

179. For prisons, the capacity of prisons under the Ministry of Public Security ranges from 2,000 to 5,000 prisoners. Each prison establishes several sub-centers, which can

accommodate up to 1,000 prisoners. The maximum capacity of prisons under the Ministry of Defense is 500 prisoners. Prisons must be strictly and safely protected, patrolled and guarded 24/24 by armed forces. The detention rooms must be built solidly, having sufficient lights and meeting environmental hygiene standards. Bed of each prisoner is at least 02 square meters (2m2) with ceramic tiled pedestal, flooring or bedding. The prisoners staying with young children shall be allocated a minimum of 03 square meters (3m2) with ceramic tiled pedestal, flooring or bedding. Each sub-center and the detention zone in the prison is equipped with 01 loudspeaker system, 01 internal cable television system; each detention room under 30 prisoners is equipped with 01 color television size 21 inches or wider; the detention room having more than 30 prisoners is equipped with 01 color television size 29 inches or wider ... (Arts 5, 6; para. 4, Art. 8; para. 2, Art. 9; para. 2, Art. 12; para. 2, Article 14 of Decree No. 117/2011/ND-CP dated 15th December, 2011 of the Government providing organisation, management of prisoners and diet, clothing, accommodation, living, medical care for prisoners).

180. For temporary detention centers and custody houses:

- Decree No. 89/1998/ND-CP dated 07th November, 1998 of the Government promulgating the regulations on temporary custody and detention (Arts 6, 13, 14, 27) and Decree No. 98/2002/ND CP dated 27th November, 2002 of the Government amending and supplementing a number of articles of the Regulation on temporary custody and detention, attached with the Decree No. 89/1998/ND-CP (Art. 1) provides that:
    - Custody houses shall have a number of custody rooms posted up with the signboard "Custody room". Custody houses may organize their own kitchens equipped with necessary utensils.
    - Detention centers shall be solidly designed and built; have sufficient lights to ensure environmental hygiene and health of persons in temporary detention or custody, ensure fire prevention, safety, ensure compatibility with the climatic conditions of each locality and the safety requirements of temporary detention and custody management. Detention centers shall set up infirmaries or hospitals to provide medical examination and treatment for those held in temporary custody or detention.
    - Custody rooms at border guard stations shall be directly managed by the Station Chiefs. The functions, tasks and powers of the Station Chiefs in the management of the temporary custody shall be the same as those stipulated for chiefs of the custody houses. The regimes towards those held in temporary custody and the regimes for management of temporary custody in custody rooms at border guard stations shall comply with the Regulations on temporary custody and detention. The border guard stations which do not have custody rooms and if it is necessary to keep in temporary custody the persons showing signs of committing offences prescribed by law, the Commanders of such border guard stations shall appoint persons to escort them to the nearest custody houses or detention centers for temporary custody as stipulated.
- The 2015 Law on Execution of Temporary Custody and Detention (Arts. 14, 27, 31) provides for more specific, progressive and higher requirements on the facilities for the custody houses and detention centers, specifically:
    - Custody houses have custody rooms, detention rooms, disciplinary rooms, prisoner managing rooms and may have other facilities for living activities, medical care and education towards the persons held in temporary custody or detention, or persons serving imprisonment sentences;
    - Detention centers are divided into detention sub-center, detention zones, detention rooms, custody rooms, detention rooms for persons who are waiting to serve the sentences of imprisonment, rooms for persons with death penalty, disciplinary rooms, prisoner managing sub-center; are solidly designed and built, have sufficient lights to ensure health of the persons held

in temporary detention or custody, environmental sanitation, fire prevention and fighting safety in accordance with climate conditions of each locality and requirements for custody and detention management; have facilities in service of custody management, living, medical care and education towards the persons held in temporary custody or detention, enforcement of sentence ...

*The inspection and monitoring mechanism of the conduct of law enforcement officers in charge of interviewing and supervising persons held in detention or custody facilities.*

181. According to Viet Nam's laws, law enforcement officers who are in charge of managing persons held in detention, custody or prison facilities shall be subject to supervision by the following authorities and authorized persons: the National Assembly, Members of the National Assembly, the Viet Nam Fatherland Front, and the People's Procuracy at all levels. In addition, the 2015 Criminal Procedure Code provides for the recording, video recording mode when interviewing the accused to facilitate the inspection and supervision by the competent authorities;[49] at the same time, they may be subject to the control and inspection of the administrative inspection agencies or specialized inspections prescribed by the 2010 Law on Inspection.

182. The 2013 Constitution and the 2015 Law on Supervisory Activities of the National Assembly and People's Councils provide for supervisory functions of the National Assembly of the entire operation of the state's agencies (Art. 1); each member of the National Assembly shall take responsibility and send reports on his/her supervisory activities to voters of his/her constituency at the constituency conference (para. 5, Art. 6).

183. The Constitution 2013 provides that: the Viet Nam Fatherland Front shall represent and protect the lawful and legitimate rights and interests of the People; and conduct supervision and provide feedback of the society ... (Art. 9). The 2015 Law on Viet Nam Fatherland Front provides that the missions of the Viet Nam Fatherland Front are to supervise the activities of state agencies, elected representatives and officials, civil servants (Art. 2). The supervision by Viet Nam Fatherland Front is the people's supervision in support of the State's supervision, examination and inspection work (para. 1, Art. 12); supervision forms include: mobilizing the people to exercise their rights to supervision, participating in supervision activities with the state bodies, through its activities, gathering and forwarding comments made by the people and its members to competent State agencies to consider, handle cases of violating law (para. 2, Art. 12).

184. The 2014 Law on Organisation of People's Procuracies provides that:

- The People's Procuracies shall supervise judicial activities in all stages, from the processing of reports, information on crimes, making recommendations for prosecution and throughout the course of investigation, prosecution, trial of criminal cases as well as conducting the supervision of temporary custody, detention and criminal execution (Chapter II). The People's procuracies shall be responsible for closely and regularly coordinating and supervising Investigation Agencies, Courts, sentence execution Agencies and other agencies in the implementation of judicial activities, as well as the agencies closely related to human rights (arts. 4, 8). The People's Procuracies shall ensure that all offences and offenders be detected, instigated, investigated, prosecuted and adjudicated in a prompt, strict, accurate, fair and lawful manner, without leaving any crimes unpunished and injustice done to innocent people; making sure that no person shall be charged with an offence, arrested, held in temporary custody or detention or have their human rights or citizens' rights restricted in a way contravening the law (para. 2, Art. 3).
- The People's Procuracies shall have the authority to cancel illegal procedural decisions; to protest against court judgments or decisions in case of wrong verdicts or omission of offences or offenders ... (para. 3, Art. 3); to protest against acts, decisions of other competent agencies and authorized individuals in judicial

[49] See further in paras. 47, 149.

activities with serious violations of law, infringement upon human rights, citizen's rights (para. 1, Art. 5).

**Implementation of Article 12**

*The obligation to promptly proceed an impartial investigation when there are reasons to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed*

185. Article 18 of the 2011 Law on Denunciation stipulates that a denunciation shall be settled in the following order: (i) Receiving and handling denunciation information; (ii) Verifying denunciation contents; (iii) Making conclusion on denunciation contents; (iv) Handling the denunciation by the denunciation solver; (v) Publicizing conclusions on denunciation contents and the decision on handling of the denounced violation. The order, procedures and competence to receive and handle the crime denunciation and information are provided for at the Joint Circular No. 06/2013/TTLT-BCA-BQP BTC-BNN&PTNT-VKSNDTC as follows: immediately after receiving information related to offence, the Investigation Agencies in the People's Public Security, the People's Army and the People's Procuracies shall conduct classification, preliminary verification of the information and forward to competent units to resolve. Between 2010 and 2015, Vietnamese authorities received many information denouncing acts showing signs of obtaining testimony by duress or applying corporal punishment.[50]

186. The time limits for investigation, for extension of the investigation: the 2003 Criminal Procedure Code (Art. 119) and the 2015 Criminal Procedure Code (Art. 172) provide that the time limits for a criminal investigation shall not exceed 02 months for less serious crimes, 03 months for serious crimes and 04 months for very serious crimes and particularly serious crimes. The time limit applies from the filing of charges to the end of the investigation. If the case is complex, the time limits for the investigation may be extended. The extension of investigation is provided for in details in those Articles.

187. The accused shall be considered not guilty until they are proved guilty in accordance with the order and procedures prescribed by this Code and until when there is the sentence of the Court, which has taken legal effect. When there is not enough evidence and the grounds for prosecution or conviction cannot be clarified according to the order and procedures prescribed by this Code, the agencies or persons competent to conduct the procedure must conclude that the accused is not guilty (Article 13 of the 2015 Criminal Procedure Code).

188. Within their tasks and powers, the competent procedure-conducting agencies must apply every lawful measure to determine the facts of criminal cases in an objective, versatile and full manner, to make clear evidences of crime and evidences of innocence, circumstances aggravating and extenuating the criminal liabilities of the accused or defendants (Article 15, the 2015 Criminal Procedure Code). Every investigation activity must respect the truth and be conducted in an objective, versatile and full manner; quickly and accurately detect every criminal act as well as make clear evidences of crime and evidences of innocence, circumstances aggravating and extenuating the criminal liabilities, causes and conditions of the offence and other circumstances that are relevant to the resolution of the case (Article 19 of the 2015 Criminal Procedure Code).

189. One of the basic principles of criminal investigation is to ensure the promptness but not leaving criminals unpunished (Circular No. 28/2014/TT-BCA dated 7th July, 2014 of the Minister of Public Security on criminal investigation in the People's Public Security).[51]

*The organisational structure, functions, duties and powers of the procedure-conducting agencies of Viet Nam*

190. Procedure-conducting agencies of Viet Nam include the Courts, the Procuracies and the Investigation Agencies (Article 33 of the 2003 Criminal Procedure Code; Article 34 of

[50] See further in paras. 210, 211.

[51] See further in Annex 4.

the 2015 Criminal Procedure Code). The organisational structure, functions, duties and powers of these agencies are as follows:

191. *The People's Courts*

- The organisational system of the People's Courts is clearly provided.[52]
- The 2014 Law on Organisation of the People's Courts provides for the functions, duties, powers of the People's courts (Art. 2); the People's Courts shall promptly and impartially conduct trials, hold their hearings in public (Art. 11); ensure the first-instance and appellate trial system (Art. 6); conduct trials on the principle that everyone is equal before law, regardless of his/her ethnicity, sex, belief, religion, social class and position; individuals, agencies and organisations are all equal before court (Art. 12); ensure procedure participants to exercise the right to adversarial process in trial (Art. 13); ensure the right to defense of the accused and defendants and the right to protection of lawful interests of involved parties (Art. 14).[53]

192. *The People's Procuracies*

- The organisational system of the People's Procuracies is clearly provided.[54]
- The 2014 Law on Organisation of the People's Procuracies provides for the function of the People's Procuracies to exercise the power to prosecute (Art. 3); supervising judicial activities of the People's Procuracies (Art. 4); coordination responsibility of the People's Procuracies with Investigation Agencies, courts and other agencies (Art. 8); duties and powers of the People's Procuracies when supervising temporary custody and detention (Art. 22); settlement of complaints and denunciations about temporary custody and detention (Art. 23); responsibilities to implement custody or temporary detention-related requests, recommendations, protests and decisions of the People's Procuracies (Art. 24); duties and powers of the People's Procuracies when supervising the execution of criminal judgments (Art. 25); responsibilities for implementing criminal judgment execution-related requests, recommendations, protests and decisions of the People's Procuracies (Art. 26)[55] ...

193. *Investigation Agencies*

- The organisational system of the Investigation Agencies is clearly provided.[56]
- The Ordinance on Organisation of Criminal Investigations 2004, amended and supplemented in 2006, 2009 provides that investigation activities must respect the truths, be carried out in an objective, comprehensive and full manner; accurately and promptly detect every criminal act, verify evidences of crime and evidences of innocence, circumstances aggravating and extenuating the criminal liabilities of offenders; without leaving any crimes unpunished and injustice done to innocent people (Art. 5).
- The 2015 Law on Organisation of Criminal Investigation Agencies provides that investigation activities shall be in compliance with the Constitution and law; ensure the centralized, unified and effective direction and command. In investigation activities, responsibilities shall be divided and powers shall be decentralized in the clear and specialized manner for strict control of the activities and to avoid overlapping; the investigation activities shall be conducted in a timely, prompt, accurate, objective, comprehensive and full manner to make sure that there would be no crimes unpunished and no wrong verdict (Art. 3). The Law also directly and clearly provides for the prohibited acts in the criminal investigation, including the prohibition of obtaining testimony by duress or applying corporal punishment and any forms of torture or cruel, inhuman or degrading treatment or punishment or any

[52] See further in para. 27 and Annex 5.
[53] See further in Annex 5.
[54] See further in para. 28 and Annex 5.
[55] See further in Annex 5.
[56] See further in paras. 29, 30 and Annex 14.

acts infringing upon the legitimate rights and interests of agencies, organisations and individuals (Art. 14).

*Procedures and measures may be applied to the suspects and victims in the investigation process.*

194. The 2003 Criminal Procedure Code provides that:

- The accused during the investigation process is entitled to 8 groups of rights (para. 2, Art. 49), including: (1) To be informed of the offences which they have been accused of; (2) To be explained on their rights and obligations; (3) To present their statements; (4) To present documents, objects as well as claims; (5) To request the change of procedure-conducting persons, expert witness and/or interpreters in accordance with the provisions of this Code; (6) To defend themselves or ask other persons to defend; (7) To receive decisions to institute the criminal cases; decisions to apply, change or cancel deterrent measures; written investigation conclusions; decisions to cease or suspend investigation; decisions to cease or suspend the criminal cases; indictments; decisions on their prosecution; and other procedural decisions as prescribed by the Criminal Procedure Code; (8) To complain about procedural decisions and acts of the agencies and persons with procedure-conducting competence.
- Besides these rights, the accused shall have the obligation to appear in response to the summonses of Investigation Agencies or Procuracies; in case of non-appearance without plausible reasons, they may be escorted; if they escape, they shall be pursued (para. 3, Art. 49). Moreover, during the process of initiation of criminal proceedings against the accused and interview of the accused, the accused may be applied some other sanctions such as suspension from their positions (Article 128).
- In order to stave off crimes in time or when there are grounds proving that the accused would cause difficulties to the investigation, the competent procedural authorities or competent persons defined by this Code may apply one of the following deterrent measures: arrest, custody, temporary detention, ban from travel outside one's residence, guaranty, deposit of money or valuable property as bail (Article 79). The contents and procedures of these deterrent measures are provided in details at Chapter VI of this Code.
- The victims are entitled to 6 groups of rights (para. 2, Art. 51), including: (1) To present documents, objects as well as claims; (2) To be informed of the investigation results; (3) To request the change of procedure-conducting persons, experts and/or interpreters in accordance with the provisions of this Code; (4) To suggest the compensation levels and measures to secure such compensation; (5) To participate in court sessions; present their opinions and arguments at court sessions in order to protect their legitimate rights and interests; (6) To complain about procedural decisions and acts of the agencies and persons with procedure-conducting competence; to appeal against court judgments and decisions regarding the compensations to be paid by, as well as the penalties imposed on, the defendants.
- Besides these rights, victims shall have the obligation to appear in response to the summonses of Investigation Agencies, Procuracies or Courts; if they refuse to give testimonies without plausible reasons, they may bear penal liability according to Article 308 of the Criminal Code (para. 4, Art. 51) or be applied some other measures such as examination of traces on their bodies (Article 152) ...

195. The 2015 Criminal Procedure Code:

- Expands and provides more details on the 10 groups of rights of the accused in the process of investigation (para. 2, Art. 60) such as (1) To give statements and opinions and bear no obligation to testify against themselves or admit to guilt; (2) To read and write digital documents or copies of such regarding charges and vindication or other copies related to their defense, upon requests, after the end of investigations; (3) To request expert examinations, valuation ... In case of disagreement with the expert examinations, they shall be entitled to state their opinions on findings of

expert examinations or to petition for additional or repeated examinations in accordance with the orders and procedures prescribed in Article 214 of the 2015 Criminal Procedure Code.

- Expands and provides more details on:
  - Preventive measures applied to the accused, including: emergency custody, arrest, temporary detainment, detention, bail, surety, residential confinement, exit restriction (Article 109). The contents and procedures of these preventive measures are provided in details at Section I, Chapter VII of this Code.
  - Coercive measures applied to the accused including: coercive delivery, property distrainment or freezing of accounts (Article 126). The contents and procedures of these coercive measures are provided in details at Section II, Chapter VII of this Code.
- Expands the rights of victims up to 14 groups of rights such as (1) To defend or have their legitimate rights and interests defended; (2) To request competent procedural authorities to protect their life, health, honor, dignity, property, legitimate rights and benefits, kindred against menaces ... (para. 2, Art. 62). Victims bear the duty to be present as per authorized procedural persons' subpoena. If they are absent due to any but not force majeure or objective obstacles, they may be escorted by force; abide by competent procedural authorities and persons' decisions and request (para. 4, Art. 62).

*The grounds for instituting cases under the laws of Viet Nam.*

196. Grounds for instituting criminal cases: criminal cases shall be instituted only when criminal signs have been identified. The identification of criminal signs shall be based on the following grounds: denunciations of individuals; information reported by agencies or organisations and individuals; Information reported on the mass media; criminal signs directly detected by competent procedural authorities; confession by offenders (Article 100 of the 2003 Criminal Procedure Code). The 2015 Criminal Procedure Code supplements a ground, which is a governmental authority's requisitions for charges to determine the criminal signs, (Art. 143). A behavior which is considered criminal or not, must be based on four factors: (1) unlawfulness against criminal law, (2) danger for society, (3) bearing the punishment and (4) being guilty, among them, the dangerous for society is the basic and important signs, which affects other signs (Article 8 of the 1999 Criminal Code (as amended and supplemented in 2009) and of 2015).

197. When receiving information about an act of torture that has been committed, the competent authority shall process information, conduct investigations in accordance with the provisions of the 2003 Criminal Procedure Code. Accordingly, within twenty days after receiving offence denunciations, information, and/or criminal case institution proposals, the Investigation Agencies shall, within the scope of their responsibilities, examine and verify the information sources and decide to institute or not to institute criminal cases. In cases where the information involves in many complicated circumstances or where the examination and verification thereof must be conducted at many different places, the time limit for settling denunciations and information may be longer, but shall not exceed two months (Art. 103).

198. As stipulated in Article 18 of the Ordinance on organisation of criminal investigations 2004, amended and supplemented in 2006, 2009 and Article 30 of the 2015 Law on Organisation of Criminal Investigation Agencies, the Investigation Agency of the Supreme People's Procuracy has the competence to investigate crimes of: obtaining testimony by duress (Art. 299), applying corporal punishment (Art. 298), bribing or forcing other persons to give false testimony or provide untruthful documents (Art. 309) of the 1999 Criminal Code (as amended and supplemented in 2009).

*Summarizing and evaluating a number of prominent cases related to obtaining testimony by duress, applying corporal punishment.*

199. There have not been many cases related to obtaining testimony by duress or applying corporal punishment in Viet Nam and each case has been strictly handled.[57]

200. The case of Le Khac Sau (officer of the police investigation team of Phan Rang-Thap Cham City Public Security, Ninh Thuan Province): he was sentenced to 05 years of imprisonment by the People's Court of Ninh Thuan province for applying corporal punishment; Another case of Nguyen Than Thao Thanh, Nguyen Minh Quyen, Pham Ngoc Man, Nguyen Tan Quang and Do Nhu Huy case (officers of Tuy Hoa City Public Security, Phu Yen Province): they were sentenced to the maximum penalty of 05 years of imprisonment by the People's High Court in Da Nang City for applying corporal punishment. These cases show that Viet Nam resolutely punishes all acts of torture, or obtaining testimony by duress, or applying corporal punishment; and that no one, including public officials infringing upon fundamental human rights, shall go unpunished; it also affirms the strong commitments of Viet Nam to respecting and protecting human rights.

**Implementation of Article 13**

*Provisions of the law of Viet Nam on the rights to complaints and/or denunciations and safeguards of complainants, denunciators and witnesses*

201. The Constitution 2013 provides that: "Citizens have the right to lodge complaints or denunciations about illegal acts of agencies, organisations or individuals with competent agencies, organisations or persons. Competent agencies, organisations or persons shall receive and resolve complaints and denunciations. Those suffering damages have the right to material and mental compensation and restoration of honor in accordance with law. Taking revenge on complainants or denunciators, or abusing the right to complaint and denunciation to slander or falsely accuse others, is prohibited" (Art. 30).

202. The 1999 Criminal Code (as amended and supplemented in 2009) criminalises acts of infringement upon the rights to complaints and/or denunciations (Art. 132). Accordingly, those who abuse positions and/or powers to obstruct the lodging of complaints and/or denunciations, the settlement of complaints and/or denunciations or the handling of those who are the subject of complaints or denunciations; or have the responsibility but refusing to abide by the decision of the agencies competent to consider and settle complaints and denunciations, thus causing damage to the complainants and the denunciators, shall be subject to sanctions of warning, non-custodial reform for up to one year or a imprisonment term of between three months and three years. If those who take revenge on the complainants and/or denunciators shall be subject to non-custodial reform for up to three years or a prison term of between six months and five years. The offenders may also be banned from holding certain posts for one to five years.

203. The 2015 Criminal Code continues to have certain changes in behaviors constituting a crime and punishment of the infringement upon the rights to complaints and/or denunciations in the direction of more advance, specification and stringency, namely: increasing the minimum penalty from 03 months up to 06 months of imprisonment, the maximum penalty from 05 years of imprisonment up to 07 years of imprisonment; supplementing the aggravating forms of criminal liability (Art. 166).

204. The 2003 Criminal Procedure Code provides that:

- Citizens, agencies and organisations shall have the right to complain about, and citizens shall have the right to denounce on, illegal acts in criminal proceedings committed by agencies or persons competent to conduct the criminal procedure or by any individuals of such agencies. Competent agencies must receive, consider and settle complaints and denunciations in a timely and lawful manner, then send notices on the settlement results to the complainants and denouncers for knowledge and taking remedial measures (Art. 31).

[57] See further in Annex 11.

- Complainants shall have 05 groups of rights (para. 1, Art. 326) such as lodging complaints at any stage of the process of settling criminal cases; receiving written replies on the settlement of their complaints; having their infringed legitimate rights and interests restored; and receive damage compensation in accordance with law. Jurisdiction and time limit for settlement of complaints are provided for from Art. 229 to Art. 233.
- Denouncers shall have 04 groups of rights (para. 1, Art. 335) such as requesting the confidentiality of their full names, addresses and autographs; requesting to be notified of the denunciation settlement results; requesting the agencies with procedure-conducting competence to protect them when they are intimidated, harassed or revenged. Jurisdiction and time limit for settlement of denunciation and responsibility of competent persons settling complaints and denunciations are provided at Articles 337 and 338 of this Code. In order to ensure these rights to be implemented strictly, this Code provides for powers of the People's Procuracies during the process of settlement of complaints and denunciations under criminal procedures (Art. 339).

205. The 2015 Criminal Procedure Code expands the subject and prescribes more clearly about the rights of the complainants, denouncers compared with the 2003 Criminal Procedure Code, namely replacing the subject of citizens to individuals; increasing assurance to the complainants, denouncers through prohibiting to take vengeance on complainants and denouncers or to abuse rights to complaint and denunciation to vilify others .... (Art. 32).

206. The 2011 Law on Complaints provides that complaints and settlement of complaints must comply with law; ensure objectiveness, publicity, democracy and timeliness (Art. 4); prohibits obstructing or causing troubles to persons exercising the right to complain; threatening, revenging or retaliating complainants ... (Art. 6).

207. The 2011 Law on Denunciations provides that denunciations must be settled in a timely, accurate and objective manner according to the law-prescribed competence, order, procedures and time limit; assuring safety for denunciators; protecting the legitimate rights and interests of the denounced subject in the process of denunciation settlement (Art. 4). When receiving and settling denunciations, competent agencies, organisations and individuals shall receive denouncers, receive and settle denunciations in accordance with the law; strictly handle violators ... If the competent agencies, organisations and individuals violate, they shall be strictly handled; if they cause damage, they shall pay compensations in accordance with the law (Art. 5).

208. The 2010 Law on Execution of Criminal Judgments provides for guaranteeing the right to complain and denounce unlawful acts and/or decision in operation in execution of criminal judgments in articles 4, 150, 154 ... To closely supervise the settlement of complaints and denunciations, the Law also provides that the procuracies shall directly inspect the settlement of complaints and denunciations by the competent authorities (Art. 142).

209. In addition, the provisions on ensuring the right to complaints and resolving the cases quickly and fairly, as well as the duty to protect complainants, denouncers and witnesses against the abuse or being threatened due to complaints, denunciation or providing evidences are also mentioned in many different legal documents such as the 2012 Law on Handling Administrative Violations, the 2014 Law on the People's Public Security Forces, the 2004 Law on National Security.[58]

*Summarising some specific cases and the effect of the above provisions*

210. From 2011 to 2015, the Ministry of Public Security received 24 cases of offence denunciations and information related to torture, obtaining testimony by duress or applying corporal punishment. The Ministry of Public Security has settled 16 cases and is resolving 08 cases. From 2010 to 15th October, 2016, the Supreme People's Procuracy received 82

[58] See further in Annex 4.

offence denunciations and information related to obtaining testimony by duress, applying corporal punishment. The Supreme People's Procuracy instituted 15 cases with 25 accused, issued the decisions of not instituting 51 cases and is verifying 16 offence denunciations and information.

211. Offence denunciations and information on acts showing signs of obtaining testimony by duress, applying corporal punishment have all been examined and those verified have all been strictly investigated and tried in accordance with the law. However, there have also been cases where the offence denunciations and information were not verified. For instance, Nguyen Duc Thang, who lived in Phu Ninh district, Phu Tho province denounced acts of hitting, obtaining testimony by duress conducted by the Investigation Agency of Dong Anh district Public Security, Ha Noi capital to force him to plead guilty; or Nguyen Van Nam, who lived in Xuan Truong district, Nam Dinh province denounced acts of hitting, obtaining testimony by duress conducted by Sy, Duy and some officers of Xuan Truong district Public Security to force him to plead guilty of resisting a law enforcement officer in performance of his/her official duties.

**Implementation of Article 14**

*The legal basis for compensation for victims of torture acts*

212. The Constitution 2013 provides that: "Competent agencies, organisations or persons shall receive and resolve complaints and denunciations. Those suffering damages have the right to material and mental compensation and restoration of honor in accordance with law" (para. 2, Art. 30). A person who is illegally arrested, held in custody, temporarily detained, charged with a criminal offence, investigated, prosecuted, brought to trial or subject to judgment enforcement has the right to compensation for material and mental damages and restoration of honor. A person who violates the law in respect of arrest, detention, holding in custody, laying of charges, investigation, prosecution, trial or judgment enforcement, thereby causing damages to others, shall be punished in accordance with law (para. 5, Art. 31).

213. The Civil Code 2015 stipulates that: "A person intentionally or unintentionally harming the life, health, honor, dignity, reputation, property, or other legal rights or interests of a person, must compensate for such damage, unless otherwise prescribed in this Code or relevant laws" (Article 584). Damage caused by breach of obligations comprises physical damage and spiritual damage. The physical damage means those actual physical losses, comprising loss of property, reasonable expenses to prevent, mitigate or restore damage, and the actual loss or reduction of income. Spiritual damage means losses related to life, health, honor, dignity or reputation and other personal benefits of an entity (Article 361).

214. The 2003 Criminal Procedure Code provides that persons who have been unjustly handled or suffered by competent persons in criminal proceedings shall have the right to damage compensation and restoration of their honor and interests. The competent agencies which have handled persons unjustly and/or damaged in criminal proceedings shall have to pay damage compensation to, and restore the honor and interests of the unjustly punished persons, the damaged persons; persons who have caused damage, shall have to reimburse the compensated amounts to the competent agencies according to law (Arts. 29, 30).

215. The 2015 Criminal Procedure Code provides for more specifically for the compensated subjects, including: persons kept in emergency situation, arrestees, persons held in temporary custody or detention and illegally, incorrectly charged, investigated, prosecuted, tried and sentenced persons (Art. 31).

216. The 2009 Law on State Compensation Liability provides that sufferers are entitled to requesting compensation-liable agencies to settle compensation (Art. 4), which is expressed through 4 basic right groups: (1) To request the State to pay damages and restore their honor as provided by this Law; (2) To be compensated by compensation-liable agencies or to have their compensation claims settled by courts and be notified of the compensation settlement; (3) To complain about or appeal against court judgments or rulings according to the procedure law; (4) To request competent agencies or organisations to restore their

legitimate rights and interests (Art. 9). For the compensation-liable agencies to receive and handle compensation claims of sufferers; to verify the damage, to negotiate with sufferers and issue compensation settlement decisions; to make payments to sufferers and settle compensation funds; to restore or propose competent agencies or organisations to restore the legitimate rights and interests of sufferers (Art. 8).

217. The 2015 Law on Organisation of Criminal Investigation Agencies prohibits preventing arrestees, persons held in temporary custody or the accused from exercising their right to receive compensations for material and spiritual damage or getting honor rehabilitation (para. 3, Art. 14).

218. The 2014 Law on Organisation of People's Courts provides that if the judges cause damage while performing their duties or exercising their powers, their courts shall pay compensations for damage and they shall pay indemnities to their courts in accordance with law (para. 6, Art. 76); if the assessors cause damage while performing their duties or exercising their powers, their court shall pay compensations for damage and they shall pay indemnities to their court in accordance with law (para. 8, Art. 89).

219. The 2014 Law on Organisation of People's Procuracies provides that cadres, civil servants, public employees and other employees of People's Procuracies shall compensate for damages caused when performing their duties or exercising powers in accordance with law (Art. 59).

220. The 2014 Law on the People's Public Security Forces provides that People's Public Security officers, non-commissioned officers and men and public security workers who breach discipline or violate law, shall, depending on the nature and severity of their violations, be disciplined, administratively sanctioned or examined for penal liability; if causing damage to the health or lives of other persons, the property or lawful interests of agencies, organisations or individuals, they shall pay compensations in accordance with law (Art. 42).

221. The 2010 Law on Execution of Criminal Judgments provides that the complainants have the right to have his/her infringed lawful rights and interests restored and receive compensations for damage in accordance with law (para. 1, Art. 154).

222. Resolution No. 96/2015/QH13 dated 26th June, 2015 of the National Assembly on promoting measures for preventing and avoiding criminal injustice and wrong verdicts and compensation for victims suffering injustice in criminal procedure, specified that when the injustice is determined, it is necessary to promptly vindicate the victims of injustice, pay compensation for the victims in accordance with the law; handle strictly the people committing violations and consider responsibility for repaying of the persons on duty who caused damage under the Law on State Compensation Liability; handle the head of the agency causing injustice, obtaining of testimony by duress, applying corporal punishment.

223. Procedures for settlement of compensation for damages; rights and obligations of individuals and organisations affected; compensation expense and responsibility for repaying of the persons on duty who caused damage are specified in the 2009 Law on State Compensation Liability and guiding documents of the implementation of this law. The rules on compensation for victims of torture shall comply with the common rules on compensation.

224. Viet Nam has resolved compensation for damages to the victims of obtaining testimony by duress, applying corporal punishment in accordance with the law. From 2011 to 2015, under the responsibility of compensation for damages of the People's Procuracies, there were 03 cases which are compensated with total amount of 220,260,192 VND (approximately 10,476 USD at the time of compensation) as a result of acts of applying corporal punishment.

225. Viet Nam also implements other measures, in addition to compensation, to restore the dignity of victims, the right to safety and health protection for these persons, to prevent recurrence and to help victims in community reintegration such as poverty reduction and illiteracy elimination programs which contribute to raising awareness, the crime prevention and anti-recidivism.

*The reintegration programs in Viet Nam for the victims of torture.*

226. Viet Nam has put in place many programs for reintegration of victims of crime, including victims of torture, victims of human trafficking (Decision No. 17/2007/QD-TTg dated 29th January, 2007 on regulations on receiving and supporting community reintegration for trafficked women and children who return from abroad) through hundreds of reintegration programs of both the central government and localities, such as the Victim Reception Center (the humane house in Lao Cai, the affection house in An Giang), the Self-reliant Group (Thanh Hoa, Tay Ninh, Thua Thien Hue), the hotline to support and protect children and victims of human trafficking, the Club to support victims of trafficking (Hai Phong).

**Implementation of Article 15**

*Provisions to ensure that statements made as a result of torture will not be used as evidence in any proceedings, except against a person accused of committing torture acts*

227. Evidence must be collected in accordance with the provisions of the 2003 Criminal Procedure Code and the 2015 Criminal Procedure Code (when this Code takes effect), which shall be valid to prove in the proceedings.[59]

228. The 2003 Criminal Procedure Code provides that the procedure-conducting persons shall not use measures of priming or/and applying corporal punishment when obtaining confessions and interviewing. The law prohibits all forms of coercion and applying corporal punishment during investigation and interview. Confessions of the accused, defendants can only be regarded as evidence if they are compatible with other evidence in the case. It is absolutely prohibited to use confessions of the accused, defendants as the only evidence to convict them.

229. The 2015 Criminal Procedure Code defines more clearly about the prohibition of torture in gathering evidence: the procedure-conducting persons shall not use measures of priming, obtaining testimony by duress during the process of obtaining confessions and interview. The law prohibits all forms of coercion and applying corporal punishment during the process of investigation and interview. Confessions of the accused, the defendants can only be regarded as evidence if they are compatible with other evidence in the case. It is absolutely prohibited to use confessions of the accused and the defendant as the only evidence to convict them. The accused and defendants are not required to prove his innocence. Thus, the law of Viet Nam is consistent with the UNCAT's requirements.

*The provisions of the law of Viet Nam on direct and circumstantial evidence*

230. In legal science of Viet Nam, based on the relationship between evidence and proof object, evidence is categorized into direct evidence and circumstantial evidence.

- Direct evidence is evidence which directly determines a proof object's detail and show immediately the proof object such as the incident is an offence or not; who carried out the offence; guilty or not guilty. Normally, the direct evidence shows the most important and basic sources of information of the offences. Direct evidence usually occurs in cases of flagrant offences, exhibits and the testimony of the victim.
- Circumstantial evidence is evidence indirectly determining the problem of the proof object, but being in conjunction with the events and other documents, which determine the problem of the proof object. Circumstantial evidence must be in the evidence system and the collection of circumstantial evidence for the conclusion of the proof object, and when separating the circumstantial evidence, it is impossible to give the conclusion. In the process of collecting evidence, it is not permitted to overlook circumstantial evidence.
- Circumstantial evidence and direct evidence are all important sources of evidence in criminal procedure.

[59] See further in paras. from 120 to 123.

*Some cases in which the evidence, which was proven to be the result of torture, have been quashed in the proceedings*

231. On 8th July, 2013, the investigation police agency in Soc Trang Province issued the decision of instituting and investigating seven persons for charges of murder, including Tran Van Do, Thach So Phach and Khau Soc.[60] In the course of the investigation, Nguyen Hoang Quan and Trieu Tuan Hung (the investigators) had applied corporal punishment to three persons to force them to confess of participating in killing Mr. Ly Van Dung. After the investigation, there was no ground to conclude the three accused conducting the murder act. On 21st May, 2014, Soc Trang Provincial Public Security suspended investigation of the case and the accused. Thus, the confessions and evidences obtained from applying corporal punishment by the investigators were quashed and were not used to convict those persons of murder in Mr. Ly Van Dung case. In addition, some other cases in which the evidence, which was the result of torture, have all been quashed in the proceedings.

**Implementation of Article 16**

*Provisions of preventing acts of other cruel, inhuman or degrading treatment or punishment which are not serious enough to be considered as torture as defined in Article 1*

232. The law of Viet Nam stipulates that all violations of the law in general must be processed, investigated quickly and fairly in all cases. Those performing acts of cruel, inhuman or degrading treatment or punishment shall be punished. Many acts have been criminalised in the Criminal Code such as offence of insults to another person (Article 121 of the 1999 Criminal Code (as amended and supplemented in 2009), Article 155 of the 2015 Criminal Code); abuse of power or position in performance of official duties (Article 281 of the 1999 Criminal Code, Article 356 of the 2015 Criminal Code); acting beyond authority in performance of official duties (Article 282 of the 1999 Criminal Code, Article 357 of the 2015 Criminal Code); abuse of position or power to hold a person in detention or custody against the law (Article 303 of the 1999 Criminal Code (as amended and supplemented in 2009), Article 377 of the 2015 Criminal Code).

233. To prevent enforcement officers from violating the law, the services and branches have issued codes of conduct, professional etiquettes and rules of discipline with regard to cadres, civil servants, employees, officers, non-commissioned officers who break the law and violate professional rules.[61]

*Status of the custody, detention and prison facilities*

234. Regulations on custody, detention and prison facilities of Viet Nam have been mentioned in paragraphs 179, 180 and 181 of the Report.

235. Regarding the temporary custody, detention and prison regimes:

- Regarding the division of custody houses, detention centers and prisons: the law of Viet Nam has detailed provisions on this matter.[62]
- About regimes for prisoners, the regimes for persons held in temporary custody or detention: the law of Viet Nam has detailed provisions on this matter.[63]

236. Regarding the medical examination and treatment regimens:

- At present, most of the detention centers which are managed by the Ministry of Public Security and the Ministry of Defence, have infirmary for medical examination and treatment for persons held in temporary custody, detention and prisoners (the Chi Hoa detention center of Ho Chi Minh City Public Security built a hospital). The medical facilities in detention centers have been invested both in physical facilities, manpower, vehicles and medical equipment so that they basically

[60] See further in Annex 11.
[61] See further in paras. from 160 to 168 and Annex 9.
[62] See further in paras. 57, 58, and 152.
[63] See further in paras. 57, 58, 153, 154, 158, 179, 180.

meets the needs of on-the-spot medical examination and treatment of common diseases for persons held in temporary custody, detention and prisoners.

- Infirmaries of detention centers have observed the provisions of the Law on Medical Examination and Treatment for the person held in temporary custody and detention from the stage of receiving patients, diagnosis, treatment, medication or hospital transfer, health certification for prisoners waiting to serve their sentences. Epidemic prevention work has been enhanced, the sanitation of cells and jails are ensured. The detention centers have actively cooperated with the Local Center for Preventive Medicine to test the tuberculosis and HIV for those with high risks of infection such as drug addicts and sex workers for timely detection and counseling, and better medical care for them. As a result, there have been no epidemics occurring in detention centers and custody houses for 15 years.
- Public Security forces in 22 localities have been coordinating with the civilian hospitals to build treatment zones for the accused, defendants and prisoners; 13 units have collaborated with the hospitals to build closets for treatment for the accused, defendants and prisoners. The number of medical staff is 796 at the prisons; 290 at the temporary detention centers; 124 at the custody houses. All custody houses accommodating 200 or more inmates have the medical chambers to provide first aids before transferring the patients to civilian hospitals for examination and treatment. For custody houses with no medical chamber, the medical first aids are undertaken by the district Public Security.

237. Happy rooms: many prisons, which are managed by the Ministry of Public Security, have arranged the so-called "Happy room". Under the provisions of the 2010 Law on Execution of Criminal Judgments, Circular No. 46/2011/TT-BCA dated 30th June, 2011 of the Ministry of Public Security providing for the prisoners to meet their relatives; receive and send letter, receive money and gifts and phone contact with relatives. Under the prison rules, based on their monthly re-education performance, prisoners who are classified as good and above may meet his or her family overnight at the happy room every month. The detention centers build private chambers and create conditions for the lawyers or defense counsels of the accused and defendants to contact with the accused and defendants in accordance with the law.

238. The quality of the custody, detention and prison facilities remains inadequate: Designs of items in the cells of the detention centers (doors, a bolt, lunch windows, vents, front and back open boxes of the cell, water supply systems, electrical systems ...) are inappropriate. The district-level custody houses are built in outdated designs with the number of custody rooms larger than the number of detention rooms. Since the land area is small, the custody houses lack of lawyers' working chambers and visiting rooms; many old custody houses, which have been degraded, fail to meet the requirements of the law for persons held in temporary custody or detention in the custody houses.

# Part III
# Summarising Viet Nam's orientation of implementation the convention against convention against torture

239. In order to continue affirming that Viet Nam is a "responsible member of the international community" and an active member of the UNCAT, in the coming time, Viet Nam continues to synchronously implement the legislative, executive and judiciary measures to prevent and fight against acts of torture as follows:

240. Enhancing the application and implementation of the measures to prevent torture in Viet Nam; effectively applying criminal procedure measures in investigating, prosecuting and trying in prompt and strict manner the persons who commit acts of torture or obtaining testimonies by force, or applying corporal punishment; facilitating lawyers' engagement in proceedings in accordance with the law; studying and piloting the use of audio and video recording in criminal proceedings; strengthening the education of code of ethics,

professional ethics of public duty performers, investigators, wardens, judicial aid officers, prosecutors, judges ...

241. Promoting activities and improving the efficiency of the monitoring mechanism of law enforcement and human rights protection in Viet Nam; every year, introducing the inclusion of inspection and supervision of implementation of anti-torture legislation for agencies and public officials, especially the procedure-conducting agencies, management enforcement criminal agencies, prison, temporary detention centers and custody houses, agencies tasked to conduct a number of investigation activities such as the Customs, the Forest Protection Service, the Fishery Surveillance Force, the Border Guard, the Coast Guard ...

242. Submitting to the Prime Minister of Viet Nam for approval of the Program on Communicating the contents of the Convention and the relevant legislation of Viet Nam to cadres, civil servants, public employees and population; overcoming difficulties and obstacles to continue communicating the content of the UNCAT and the regulations of the Viet Nam's laws against torture to all audience with appropriate contents and methods; promoting the awareness raising in ministries, services and provinces and cities under the central Government which have not been implemented.

243. Continuing to review and improve the legal provisions against torture in Viet Nam through the following activities:

- Reviewing the application of the new provisions of the 2013 Constitution and the related codes, laws and ordinances of Viet Nam, in which, focusing on applying the 2015 Criminal Code, the 2015 Criminal Procedure Code, the 2015 Law on Execution of Temporary Custody and Detention after these legislations come into effect to assess comprehensively the feasibility of the provisions of the prohibition of torture, or cruel, inhuman or degrading treatment or punishment in Viet Nam; thus, proposing the amendments of the laws in accordance with the UNCAT obligations and the actual conditions of Viet Nam.
- Implementing the 2016 Law on International Treaties; comprehensively amending and supplementing the 2007 Law on Mutual Legal Assistance.
- Continuing to stipulate refusal of legal assistance in criminal matters, extradition or transfer of sentenced persons when having substantial reasons to assume that the person sought has been or will be subject to torture or other cruel, inhuman or degrading treatment or punishment in the Requesting State as the mandatory provision of the bilateral treaties on such issues that Viet Nam will sign with foreign States, attaching special importance to the countries which are also the members of the UNCAT.
- Continuing to introduce the tenor of "commitment not to torture and cruel, inhuman or degrading treatment or punishment" in the requests for extradition and transfer of sentenced persons sent to Viet Nam by a foreign country and the extradition requests of Viet Nam sent to the other country as a mandatory rule.
- Continuing to research and learn international experience in formulation and improvement of anti-torture legislation of the member states of the UNCAT.

**Developing models to assist victims of torture or of cruel, inhuman or degrading treatment or punishment.**

244. Developing a project proposal on assessing the causes and conditions leading to acts of obtaining testimony by duress or applying corporal punishment that occurred in Viet Nam in order to work out appropriate solutions (possible causes may include pressure for merits, short-temperedness, or reactions by the detainees, the accused, defendants ...).

245. Expanding partnerships with the member states of the UNCAT in the fight and prevention of torture and other crimes related to torture; at the same time, exchanging of information and experience on the implementation of the UNCAT, as well as best practices of torture prevention.

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